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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Friday, July 24, 2009

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–FV–08–0107; FV09–925–2 FIR]

Grapes Grown in a Designated Area of Southeastern California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the assessment rate established for the California Desert Grape Administrative Committee (Committee), for the 2009 and subsequent fiscal periods from $0.02 to $0.01 per 18-pound lug of grapes handled. The Committee locally administers the marketing order for grapes grown in a designated area of southeastern California (order). The interim final rule was necessary to align the Committee's expected revenue with decreases in its proposed budget for the 2009 fiscal period, which began on January 1.

DATES: *Effective Date:* Effective July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Robinson, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: *Jen.Robinson@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, California desert grape handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable desert grapes for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on January 1, and ends on December 31.

In an interim final rule published in the **Federal Register** on February 24, 2009, and effective on February 25, 2009 (74 FR 8141, Doc. No. AMS–FV–08–0107; FV08–932–2 IFR), § 925.215 was amended by decreasing the assessment rate established for the Committee for the 2009 and subsequent fiscal periods from $0.02 to $0.01 per 18-pound lug or equivalent of desert grapes. The decrease in the per-unit assessment rate was possible due to significant decreases in budgeted management and administrative expenses for 2009.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Nine of the 14 handlers subject to regulation have annual grape sales of less than $7 million. Based on data from the National Agricultural Statistics Service (NASS) and the Committee, the average crop value for 2008 is about $53,040,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about $1,060,800, which is above the SBA threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2009 and subsequent fiscal periods from $0.02 to $0.01 per 18-pound lug of grapes. The Committee unanimously recommended expenditures of $77,692 and an assessment rate of $0.01 per 18-pound lug of grapes for the 2009 fiscal period. The assessment rate of $0.01 is one-half of the rate currently in effect. The number of assessable grapes is estimated at 6.5 million 18-pound lug of grapes. Thus, the $0.01 rate should provide $65,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2009 fiscal period include $10,500 for compliance activities, $53,000 for salaries and payroll expenses, and

$14,192 for other administrative expenses. In comparison, budgeted expenses for these items in 2008 were $5,000 for compliance activities, $61,000 for salaries, $18,000 for research, and $49,254 for other administrative expenses.

Decreases in management and administrative expenses are the result of management services, office rental fees and utilities being shared by the Committee and the California Date Administrative Committee (CDAC). In 2008, the Committee and the CDAC agreed to share management and administrative costs in order to streamline expenses for both programs. Additionally, the Committee recommended not renewing its budget for research in 2009 given that there were no pending research proposals at the time the budget was reviewed.

Prior to arriving at this budget, the Committee considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by the following formula: Anticipated 2009 expenses ($77,692) plus the desired 2009 ending reserve ($88,534), minus the 2009 beginning reserve ($100,226) plus anticipated interest income ($1,000), divided by the estimated 2009 shipments (6.5 million 18-pound lugs).

This rate should provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $77,692 and result in a December 2009 ending reserve of $88,534. This figure is about $10,800 over the Committee's 2009 expenses. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve. The Committee plans to continue using reserve funds to help meet its expenses and bring the reserve to a level lower than its expenses.

To calculate the percentage of grower revenue represented by the assessment rate for 2008, the assessment rate of $0.02 per 18-pound lug is divided by the estimated average grower price (according to the NASS). This results in estimated assessment revenue for the 2008 season as a percentage of grower revenue of .245 percent ($0.02 divided by $8.16 per 18-pound lug). NASS data for 2009 is not yet available. However, applying the same calculations above using the average grower price for 2006–08 would result in estimated assessment revenue as a percentage of total grower revenue of .13 percent for the 2009 season ($0.01 divided by $7.77 per 18-pound lug). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2009.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim final rule were required to be received on or before April 27, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0107.*

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 8141, February 24, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA—[AMENDED]

■ Accordingly, the interim final rule amending 7 CFR part 925, which was published at 74 FR 8141 on February 24, 2009, is adopted as a final rule, without change.

Dated: July 20, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–17602 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. FDA–2009–N–0316]

New Drug Applications and Abbreviated New Drug Applications; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its new drug application (NDA) and abbreviated new drug application (ANDA) regulations to correct the address for the Orange Book Staff in the Office of Generic Drugs. This action is being taken to ensure accuracy and clarity in the agency's regulations.

DATES: This rule is effective July 24, 2009.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, rm. 6308, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3506.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in part 314 (21 CFR part 314) to correct the address for Orange Book Staff in the Office of Generic Drugs in §§ 314.52(a)(2), 314.53(f), and 314.95(a)(2).

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

§ 314.52 [Amended]

■ 2. Section 314.52 is amended in paragraph (a)(2) by removing ''at the address identified on FDA's Web site (*http://www.fda.gov/cder/ogd*)'' and by adding in its place ''7500 Standish Pl., Rockville, MD 20855''.

§ 314.53 [Amended]

■ 3. Section 314.53 is amended in paragraph (f) by removing ''at the address identified on FDA's Web site (*http://www.fda.gov/cder/ogd*)'' and by adding in its place ''7500 Standish Pl., Rockville, MD 20855''.

§ 314.95 [Amended]

■ 4. Section 314.95 is amended in paragraph (a)(2) by removing ''at the address identified on FDA's Web site (*http://www.fda.gov/cder/ogd*)'' and by adding in its place ''7500 Standish Pl., Rockville, MD 20855''.

Dated: July 17, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17680 Filed 7–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0659]

RIN 1625–AA08

Special Local Regulations for Marine Events; Port Huron to Mackinac Island Sail Race

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will enforce a special local regulation for the annual Port Huron to Mackinac Island Sail Race. This action is necessary to safely control vessel movements in the vicinity of the race starting point and provide for the safety of the general boating public and commercial shipping. During this period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander (''PATCOM'').

DATES: This rule is effective from 9 a.m. through 4 p.m. on July 25, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0659 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0659 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this temporary rule, call or e-mail Mr. Frank Jennings, Jr., Enforcement Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH, via e-mail at: *frank.t.jennings@uscg.mil* or by phone at: (216) 902–6094. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the special local regulation pertaining to this annual race was previously published in the Code of Federal Regulations, but inadvertently removed during the most recent revision to 33 CFR 100.901. Because this is an annual race, held in the same location, local maritime interests are already familiar with the provisions of these regulations. Based on the late discovery of the missing permanent rule, the hazards associated with marine regattas within Port Huron and the short amount of time until the event, delaying publication of this regulation would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The special local regulation pertaining to this annual race was previously published in the Code of Federal Regulations, but inadvertently removed during the most recent revision to 33 CFR 100.901. Because this is an annual race, held in the same location, local maritime interests are already familiar with the provisions of these regulations. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this operation and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

Special local regulations are necessary to safely control vessel movements in the vicinity of the race starting point and provide for the safety of the general boating public and commercial shipping. The Captain of the Port Detroit has determined that the start of the Port Huron to Mackinac Island Sail Race does pose significant risks to public safety and property. The likely combination of congested waterways, vessels engaged in a regatta, and fast currents could easily result in serious injuries or fatalities.

Discussion of Rule

The Coast Guard will enforce special local regulations for the annual Port Huron to Mackinac Sail Race from 9 a.m. until 4 p.m. on July 25, 2009. The special local regulations apply to the waters of the Black River, St. Clair River and lower Lake Huron from:

Latitude	Longitude
42°58.8′ N	082°26′ W, to
42°58.4′ N	082°24.8′ W, thence northward along the International Boundary to
43°02.8′ N	082°23.8′ W, to
43°02.8′ N	082°26.8′ W, thence southward along the U.S. shoreline to
42°58.9′ N	082°26′ W, thence to
42°58.8′ N	082°26′ W.

[DATUM: NAD 1983].

In order to ensure the safety of spectators and participating vessels, the special local regulations will be in effect for the day of the start of the event. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander

(''PATCOM''). Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

In the event these special local regulations affect shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign ''Coast Guard Patrol Commander'' on Channel 16 (156.8 MHZ).

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Black River, St. Clair River and lower Lake Huron from 9 a.m. until 4 p.m. July 25, 2009.

These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only 7 hours on a weekend when the majority of vessel traffic transiting the area is recreational. Vessel traffic will be allowed to pass through the area of the race start with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will issue maritime advisories widely to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate Tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs

has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves the enforcement of special local regulations, pursuant to 33 CFR 100, for the annual Port Huron to Mackinac Island Sail Race, July 25, 2009 at 9 a.m. to July 25, 2009 at 4 p.m. This action is necessary to safely control vessel movements in the vicinity of the start of the race and provide for the safety of the general boating public and commercial shipping. Regulations will be in effect for seven hours on the day the event starts. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. A new temporary § 100.35T09–0659 is added as follows:

§ 100.35T09–0659 Special Local Regulations for Marine Events; Port Huron to Mackinac Island Sail Race.

(a) *Location.* The special local regulations apply to the waters of the Black River, St. Clair River and lower Lake Huron from:

Latitude	Longitude
42°58.8′ N	082°26′ W, to
42°58.4′ N	082°24.8′ W, thence northward along the International Boundary to
43°02.8′ N	082°23.8′ W, to
43°02.8′ N	082°26.8′ W, thence southward along the U.S. shoreline to
42°58.9′ N	082°26′ W, thence to
42°58.8′ N	082°26′ W.

[DATUM: NAD 1983].

(b) *Effective period.* This rule is effective from 9 a.m. to 4 p.m. on July 25, 2009.

(c) *Regulations.*

(1) In accordance with the general regulations in section 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (''PATCOM''). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign ''Coast Guard Patrol Commander.'' Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer.

(2) Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the even or any other craft. The rules in this subparagraph shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The PATCOM may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The PATCOM may establish vessel size and speed limitations and operating conditions. The PATCOM may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The PATCOM may terminate the marine event or the operation of vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 10, 2009.

F.M. Midgette,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E9–17748 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0578]

Drawbridge Operation Regulations; East River, New York City, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Roosevelt Island Bridge across the East River, mile 6.4, at New York City, New York. Under this temporary deviation the bridge may remain in the closed position for one month to facilitate completion of ongoing bridge maintenance. Vessels that can pass under the draw without a bridge opening may do so at all times.

DATES: This deviation is effective from July 24, 2009 through August 15, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0578 and are available online at *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0578 in the docket ID box, pressing enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management

Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165, *joe.m.arca@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Roosevelt Island Bridge, across the East River, mile 3.1, at New York City, New York, has a vertical clearance in the closed position of 34 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.781(c).

The East River at the bridge location is a secondary channel not normally used by the local seasonal recreational vessels, and commercial vessels that can transit around Roosevelt Island on the other side.

The owner of the bridge, New York City Department of Transportation, requested a temporary deviation to facilitate the completion of construction for a major rehabilitation of the bridge.

On March 19, 2009, we published a temporary deviation entitled ''East River, New York'' in the **Federal Register** (74 FR 11645) that allowed the Roosevelt Island Bridge to remain in the closed position from April 15, 2009 through July 14, 2009, to facilitate rehabilitation construction at the bridge.

On June 18, 2009, the bridge owner notified us that the construction authorized under the above temporary deviation would not be completed as originally scheduled on July 14, 2009, and that an additional temporary deviation would be necessary for one additional month, July 15, 2009 through August 15, 2009, in order to finish their work.

Under this temporary deviation the Roosevelt Island Bridge may remain in the closed position from July 15, 2009 through August 15, 2009. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 14, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–17749 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0456]

RIN 1625–AA00

Safety Zone; Naval Training August and September, San Clemente Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Pacific Ocean at the north end of San Clemente Island in support of Naval Live Fire Training. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective from August 1, 2009 through September 30, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0456 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0456 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Kristen.A.Beer@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of any live fire training on the dates and times this rule will be in effect and delay would be contrary to the public interest.

For the same reasons, the Coast Guard also finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the training.

Background and Purpose

U.S. Naval forces will be conducting intermittent training involving live fire exercises throughout August and September 2009. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from August 1, 2009 through September 30, 2009. The limits of the safety zone will be the navigable waters of the Pacific Ocean at the north end of San Clemente Island bounded by lines connecting the following coordinates: Beginning at 33°01.09′ N, 118°36.34′ W; thence to 32°59.95′ N, 118°39.77′ W; thence running parallel to the shoreline at a distance of approximately 3 NM to 33°02.81′ N, 118°30.65′ W; thence to 33°01.29′ N, 118°33.88′ W; thence along the shoreline returning to 33°01.09′ N, 118°36.34′ W (NAD 83).

This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training

activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial and recreational vessels will not be allowed to transit through the designated safety zone during specified times of training.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Pacific Ocean on the north end of San Clemente Island from August 1, 2009 until September 30, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced only during naval training exercises. Vessel traffic can pass safely around the zone. Traffic will be allowed to pass through the zone with the permission of the U.S. Navy or U.S. Coast Guard. Before the effective period, the Coast Guard will issue broadcast notice to mariners (BNM) alerts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because this rule establishes a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary section § 165.T11–224 to read as follows:

§ 165.T11–224 Safety Zone; Naval Training August and September, San Clemente Island, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Pacific Ocean, from surface to bottom, at the north end of San Clemente Island bounded by lines connecting the following points: Beginning at 33°01.09′ N, 118°36.34′ W; thence to 32°59.95′ N, 118°39.77′ W; thence running parallel to the shoreline at a distance of approximately 3 NM to 33°02.81′ N, 118°30.65′ W; thence to 33°01.29′ N, 118°33.88′ W; thence along the shoreline returning to 33°01.09′ N, 118°36.34′ W. These coordinates are based on NAD 83.

(b) *Effective Period.* This section is effective from August 1, 2009 through September 30, 2009 during naval training exercises. If training is concluded prior to the scheduled termination time, the COTP will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section: *Designated representative,* means any Commissioned, Warrant, or Petty Officers of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the COTP; *non-authorized personnel and vessels,* means any civilian boats, fishermen, divers, and swimmers.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the COTP San Diego or his designated representative.

(2) Non-authorized personnel and vessels requesting permission to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative. They may be contacted on VHF–FM Channel 16, or at telephone number (619) 278–7033.

(3) Naval units involved in the exercise are allowed in confines of the established safety zone.

(4) All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative.

(5) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(6) The Coast Guard may be assisted by other federal, state, or local agencies including the U.S. Navy.

Dated: June 15, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–17746 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK95

Recoupment of Severance Pay From VA Compensation; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting Amendment.

SUMMARY: This document contains a correction to the regulation of the Department of Veterans Affairs (VA) that governs recoupment of lump-sum readjustment pay from disability compensation. This correction is required in order to amend an authority citation in the regulation. No substantive change to the content of the regulation is being made by this correcting amendment.

DATES: *Effective:* July 24, 2009.

FOR FURTHER INFORMATION CONTACT: James E. Figliozzi, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–4902.

SUPPLEMENTARY INFORMATION: VA published an amendment to a final rule in the **Federal Register** on September 27, 2002 (See 67 FR 60868), that, among other things, added 10 U.S.C. 1174(h)(2) and 10 U.S.C. 1212(c) as authority citations for 38 CFR 3.700(a)(2)(iii). The citation to 10 U.S.C. 1212(c) is incorrect, because that statute governs the recoupment of disability severance pay. A subsequent amendment to the final rule on June 5, 2009 (See 74 FR 26957) retained this incorrect authority citation. This document corrects that error. Because the citation to 10 U.S.C. 1174(h)(2) is correct, it remains unchanged.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

■ Accordingly, 38 CFR part 3 is corrected by making the following correcting amendment:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. In § 3.700, revise the authority citation after paragraph (a)(2)(iii) to read as follows:

§ 3.700 General.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(Authority: 10 U.S.C. 1174(h)(2))

* * * * *

William F. Russo,

Director of Regulations Management.

[FR Doc. E9–17308 Filed 7–23–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

[Docket ID FEMA–2008–0001]

RIN 1660–AA58

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Write-Your-Own Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, an interim rule published on April 3, 2008. The interim rule amended portions of the Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement between Write-Your-Own Companies and FEMA. The added language assisted WYO Companies by recognizing each party's duties under the Arrangement and amended the way FEMA communicates changes to the Unallocated Loss Adjustment Expenses compensation rate to WYO Companies.

DATES: This rule is effective August 24, 2009.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Acting Federal Insurance Administrator, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3429 (Phone), (202) 646–3445 (facsimile), or *Edward.Connor@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of sections 1304 and 1345 of the National Flood Insurance Act of 1968, Public Law 90–448, 82 Stat. 476, as amended (42 U.S.C. 4011, 4081), the Federal Emergency Management Agency (FEMA) provides insurance protection against flood damage to homeowners, businesses, and others by means of the National Flood Insurance Program (NFIP). The sale of flood insurance is largely implemented by private insurance companies that participate in the NFIP Write-Your-Own (WYO) program. Through the WYO program, insurance companies enter into agreements with FEMA to sell and service flood insurance policies and adjust claims after flood losses.

Under the WYO program, 88 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names based on the Financial Assistance/Subsidy Arrangement (Arrangement). The Arrangement is published at 44 CFR part 62, Appendix A and defines the duties and responsibilities of insurers that sell, service, and market insurance under the WYO program. The Arrangement also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers. The Arrangement is renewed yearly through written agreement between the WYO Companies and FEMA.

FEMA published an interim final rule on April 3, 2008, (73 FR 18182) in which it made three changes to the Arrangement. These changes either clarified existing practices or clarified how FEMA communicates certain information to WYO Companies.

First, Article II, section G.3., was added to require the WYO Companies to notify their agents of the requirement to comply with State regulations regarding flood insurance agent education, notify them of flood insurance training opportunities needed to meet the minimum NFIP training requirements called for in section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264, 118 Stat. 727 (42 U.S.C. 4011 note), and assist FEMA in periodic assessment of agent training needs. Although WYO Companies were already undertaking these efforts, they were added to the Arrangement to formalize the commitment.

Second, FEMA revised Article VII, section A. to provide additional clarification that there is no requirement that WYO Companies use their own funds to pay NFIP claims when there are no funds available in the National Flood Insurance Fund (NFIF) to be drawn down through the company letter of credit. In such circumstances, the Federal Insurance Administrator would suspend the NFIP's payment of claims until funds are again available in the Treasury, and the WYO Companies would not be required to pay claims from their own funds in the event of such a suspension. This change was consistent with pre-existing FEMA policy.

Finally, FEMA revised Article III, section C.1. of the Arrangement which deals with the Unallocated Loss Adjustment Expense (ULAE) for which WYO Companies receive reimbursement under the Arrangement. ULAE is intended to cover those claim handling expenses that are not associated with specific claims, such as maintaining the home office claims staff and establishing and running on-site claims field offices. Before the interim final rule, the ULAE rate was an expense reimbursement of 3.3 percent of the incurred loss (except that it does not include ''incurred but not reported''). The effect of the interim final rule was to remove the ULAE compensation percentage from the Arrangement. Instead, the percentage is now communicated by FEMA to the WYO Companies through a formula that is not written into the Arrangement. For fiscal year 2009, the formula was sent to each WYO Company as part of their offer to renew their Financial Assistance/Subsidy Arrangement.

Although the interim final rule was focused on the manner in which the ULAE formula is communicated to the WYO Companies, and not the actual ULAE rate itself, FEMA sought data to use in its efforts to revise the formula, and suggestions for ways to tailor the formula to ensure that it would accurately reimburse WYO Companies for their actual loss. WYO Companies were encouraged to submit actual ULAE data during the comment period of the interim final rule to assist FEMA in continuing to refine the formula.

II. Discussion of Public Comments

FEMA received no comments from the public regarding the interim final rule. All previously published rulemaking documents, including the interim final rule which contains an in-depth explanation for the changes made, and supporting data are available in the public docket for this rulemaking. The public docket for this rulemaking is available online by conducting a search for Docket ID FEMA–2008–0001, at the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

III. Regulatory Requirements

Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801–808. As discussed in depth below in the Executive Order 12866 analysis, this rule is not a ''major rule'' within the meaning of that Act and will not result in an annual effect on the economy of $100,000,000 or more. Moreover, it will not result in a major increase in costs or

prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor does FEMA expect that it will have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This rule revised the Arrangement between the WYO Companies and FEMA to encourage agents writing flood insurance under the NFIP to avail themselves of the training opportunities needed to meet the minimum NFIP training requirements, to clarify that there is no requirement that WYO Companies use their own funds to pay NFIP claims when there are no funds available in the NFIF to be drawn down through the company letter of credit, and to change the method in which FEMA communicates the ULAE rate to the WYO Companies. These changes were made to improve the Arrangement and to allow FEMA to run the NFIP in a more efficient and reasonable manner.

Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, a significant regulatory action is subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule is not a ''significant regulatory action'', therefore OMB has not reviewed it under that Order. This rule adopts as final, without change, an interim rule published on April 3, 2008. The interim rule made three changes to the Arrangement. The first change simply clarifies existing practices. Article II, section G.3., was added to address the WYO Companies' cooperation in helping ensure that agents writing flood insurance under the NFIP meet the minimum NFIP training requirements.[1] This new section of the Arrangement will not affect the training and education requirements, which are already established by the States. Although WYO Companies are already undertaking these efforts, they were added to the Arrangement to formalize the commitment. This change will have no economic impact.

WYO Companies have sought clarification as to what would occur following a large scale flooding event if there are no funds available in the NFIP to be drawn down through the company letter of credit. Therefore, the second change clarifies that there is no requirement that WYO Companies use their own funds to pay NFIP claims when there are no funds available in the NFIP to be drawn down through the company letter of credit. The Federal Insurance Administrator will suspend the NFIP's payment of claims until funds are again available in the Treasury. This change is consistent with pre-existing FEMA policy, will not affect the amount of FEMA's funding, and will have no economic impact.

Finally, FEMA revised Article III, section C.1. of the Arrangement which deals with the ULAE for which WYO Companies receive reimbursement under the Arrangement. The rule removed the fixed 3.3 percent of ULAE compensation from the Arrangement to allow FEMA added flexibility in adjusting the rate as needed to best align with the actual expenses incurred by the WYO Companies. At present, the ULAE is reimbursed according to a revised formula of 1 percent of net written premium and 1.5 percent of incurred loss. FEMA will adjust the rate as needed to reflect the actual expenses incurred by the WYO Companies on an annual basis.

Table 1 below shows the historic ULAE compensation that the program paid to WYO Companies over the 21 years from 1987 to 2007. These figures have been compiled using historic accounting statements submitted by the WYO Companies. The ULAE is intended to cover those claim handling expenses that are not associated with specific claims, such as maintaining the home office claims staff and establishing and running on-site claims field offices. The 3.3 percent rate functioned equitably during most years of the NFIP, under-compensating companies moderately in light loss years, while providing slightly more compensation in heavier loss years. However, after catastrophic disasters such as Hurricane Katrina, FEMA found that the 3.3 percent fixed rate dramatically over compensated WYO Companies.

The average annual impact of this rule is estimated to be $13.93 million per year (in 2007 $), which represents a decrease in the ULAE compensation to WYO Companies. However, in an ''average'' loss year excluding the years 2005 and 2006 for Hurricane Katrina, the NFIP has paid out approximately $22.02 million per year in ULAE (=$418,468,366/19). With the new formula, the annual impact would result in an increase in ULAE compensation to WYO Companies of $605,210 per year (in 2007 $). The annual impact will vary as the rate will be adjusted annually to reflect the actual expenses incurred by the WYO Companies; however, it is not likely to have a significant economic impact of $100 million or more per year. The data from 1987 to 2007 used to generate these figures is available in the public docket for this rulemaking.

TABLE 1—THE IMPACT OF THE NEW FEE SCHEDULE

FY	Net written premium (WP) (in 2007 $)[2]	Incurred loss (IL) (in 2007 $)	Fixed ULAE (3.3% of incurred loss) (in 2007 $)	New ULAE fee schedule (1% of WP + 1.5% of IL) (in 2007 $)	New ULAE fee schedule less fixed ULAE (in 2007 $)
1987	$581,620,328	$74,573,109	$2,460,913	$6,934,800	$4,473,887
1988	645,173,008	65,777,062	2,170,643	7,438,386	5,267,743
1989	715,237,333	369,480,867	12,192,869	12,694,586	501,718

[1] An NFIP insurance agent may satisfy the minimum training and education requirements by completing an online course, which may be approved for 3 hours of continuing education credit per year by State.

TABLE 1—THE IMPACT OF THE NEW FEE SCHEDULE—Continued

FY	Net written premium (WP) (in 2007 $)[2]	Incurred loss (IL) (in 2007 $)	Fixed ULAE (3.3% of incurred loss) (in 2007 $)	New ULAE fee schedule (1% of WP + 1.5% of IL) (in 2007 $)	New ULAE fee schedule less fixed ULAE (in 2007 $)
1990	769,271,356	685,763,329	22,630,190	17,979,164	−4,651,026
1991	780,514,853	206,603,224	6,817,906	10,904,197	4,086,290
1992	796,262,026	473,136,630	15,613,509	15,059,670	−553,839
1993	866,436,821	1,097,485,315	36,217,015	25,126,648	−11,090,367
1994	932,647,295	270,791,261	8,936,112	13,388,342	4,452,230
1995	1,041,750,604	1,314,742,022	43,386,487	30,138,636	−13,247,850
1996	1,157,008,118	1,152,337,444	38,027,136	28,855,143	−9,171,993
1997	1,294,209,933	885,147,617	29,209,871	26,219,314	−2,990,558
1998	1,500,206,671	522,197,486	17,232,517	22,835,029	5,602,512
1999	1,528,655,735	909,405,646	30,010,386	28,927,642	−1,082,744
2000	1,557,194,095	514,278,754	16,971,199	23,286,122	6,314,923
2001	1,678,554,108	1,495,645,122	49,356,289	39,220,218	−10,136,071
2002	1,796,558,215	276,916,036	9,138,229	22,119,323	12,981,093
2003	1,853,315,163	559,297,309	18,456,811	26,922,611	8,465,800
2004	1,945,458,730	1,014,727,339	33,486,002	34,675,497	1,189,495
2005	2,060,079,530	7,612,410,664	251,209,552	134,786,955	−116,422,597
2006	2,353,434,684	11,730,924,332	387,120,503	199,498,212	−187,622,291
2007	2,535,371,429	792,553,990	26,154,282	37,242,024	11,087,742
Total	28,388,960,039	32,024,194,560	1,056,798,420	764,252,519	−292,545,902
Per Year	1,351,855,240	1,524,961,646	50,323,734	36,392,977	−13,930,757

National Environmental Policy Act

FEMA's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) at paragraph (ii) of 44 CFR 10.8(d)(2) categorically exclude the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. The changes made in this regulation constitute actions to enforce Federal, State or local codes, standards or regulations. This rulemaking will not have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement are required.

Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism,'' (64 FR 43255, Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. The changes in this rule affect the contractual relationship between FEMA and WYO Companies. Participation as a WYO Company is voluntary and does not affect State policymaking discretion. In accordance with section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. This rule does not impose any new reporting or recordkeeping requirements, nor does it revise information collection requirements currently approved under the Paperwork Reduction Act of 1995.

Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Though this rule will not result in such an expenditure, FEMA does discuss the effects of this rule elsewhere in this preamble.

Moreover, because this rule addresses a pre-existing Arrangement between FEMA, Federal Insurance Administration, and WYO Companies it does not impose any additional enforceable duty beyond that already established. Participation as a WYO Company is voluntary and does not affect State policymaking discretion. Accordingly, this rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

[2] Numbers were adjusted for inflation based on Consumer Price Index (CPI) published by the Bureau of Labor Statistics, *http://inflationdata.com/inflation/Inflation_Rate/HistoricalInflation.aspx.*

Populations'' (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin. FEMA believes that no action under this rule will have a disproportionately high or adverse effect on human health or the environment, and that the rule meets the requirements of the Executive Order.

Executive Order 13045, Protection of Children

FEMA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this rule under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000). This rule will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' (53 FR 8859, Mar. 18, 1988) as supplemented by Executive Order 13406, ''Protecting the Property Rights of the American People'' (71 FR 36973, June 28, 2006). This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule amending 44 CFR part 62 which was published at 73 FR 18182, Apr. 3, 2008, is adopted as final without change.

Dated: July 16, 2009.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–17744 Filed 7–23–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 356, 365, and 374

[Docket No. FMCSA–2008–0235]

RIN 2126–AB16

Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of disposition.

SUMMARY: On March 17, 2009, FMCSA published a notice in the **Federal Register** (74 FR 11318) extending the effective date of its January 16, 2009 final rule entitled ''Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes'' until June 15, 2009. This allowed for the solicitation of additional public comments on the final rule and gave the incoming Administration sufficient time to consider and respond to comments. After reviewing the one comment that was received, FMCSA decided to allow the January 19, 2009 final rule to go into effect. This notice addresses the comment that was submitted.

DATES: The effective date for the rule amending 49 CFR Parts 356, 365, and 374 published at 74 FR 2895 on January 16, 2009, was June 15, 2009. The compliance date for this rule was July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Regulatory Development Division, (202) 366–5370 or by e-mail at: *FMCSAregs@dot.gov.*

SUPPLEMENTARY INFORMATION:

On January 16, 2009, FMCSA published a final rule announcing the discontinuation of the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate (74 FR 2895). The Agency indicated that it will register such carriers as regular-route carriers without requiring the designation of specific regular routes and fixed end-points. Once motor carriers have obtained regular-route, for-hire operating authority from FMCSA, they will no longer need to seek additional FMCSA approval in order to change or add routes. The rule amended certain provisions of 49 CFR Parts 356, 365 and 374 to make them consistent with the Agency's discontinuation of the route designation requirement. Each registered regular-route motor carrier of passengers will continue to be subject to the full safety oversight and enforcement programs of FMCSA and its State and local partners.

The effective date of the rule was originally March 17, 2009, with a compliance date of July 15, 2009. In accordance with the January 20, 2009 memorandum from the Assistant to the President and Chief of Staff (74 FR 4435), FMCSA published a notice on March 3, 2009 seeking comment on a proposal to delay the effective date of the final rule for 90 days (74 FR 9172).

Based on comments submitted in response to the March 3 notice, FMCSA extended the effective date of the final rule from March 17, 2009, to June 15, 2009, for the purpose of allowing the new leadership of the Department of Transportation to review the proceeding and to seek additional public comment (74 FR 11318, March 17, 2009).

Comments to the March Notice

Greyhound Lines, Inc. (Greyhound) submitted the only comment to the March 17 notice. Greyhound expressed concern that the Agency's proposal would prevent meaningful implementation of the Over-The-Road Bus Transportation Accessibility Act of 2007, Public Law 110–291, 122 Stat. 2915, July 30, 2008 because, without route designations, FMCSA would be unable to assess whether an applicant for new operating authority has adequate equipment and systems to comply with the Americans with Disabilities Act (ADA). Moreover, eliminating the need for existing carriers to seek new authority before expanding their operations would eliminate FMCSA's ability to assess ADA compliance before allowing route expansion.

Greyhound also took issue with the Agency's statement, in the preamble to the final rule, that FMCSA and its predecessor agencies have not used route designations in determining whether an applicant could operate safely over a specific route, but provided no cases to support its position. Greyhound reiterated arguments, made previously in this

rulemaking proceeding, that FMCSA adopt a new process that would give greater scrutiny to a passenger carrier's willingness and ability to comply with safety fitness and ADA requirements at the application stage.

Response to Greyhound's Comment

FMCSA has not used the route filings for any of its safety enforcement or other program purposes. The Department of Transportation has signed the statutorily-required Memorandum of Understanding on ADA enforcement with the Department of Justice, which has the primary ADA enforcement role, and FMCSA will use other existing authorities to consider and, where appropriate, take enforcement action with respect to complaints of ADA non-compliance. These existing authorities do not require establishment of a separate enforcement process. Accordingly, FMCSA allowed the final rule to become effective on June 15, 2009.

The OP–1(P) application form has also been changed to eliminate the current route-designation and mapping requirements. Because changes to the OP–1(P) form had to be approved by the Office of Management and Budget, FMCSA delayed implementation of the new procedures until July 15, 2009. The rule is now in effect and compliance is required by all regular-route motor carriers of passengers.

Issued on: July 17, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–17620 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 74, No. 141
Friday, July 24, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Doc. No. AMS–FV–09–0040; FV09–924–1 PR]

Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) for the 2009–10 and subsequent fiscal periods from $1.00 to $2.00 per ton for fresh prunes. The Committee is responsible for local administration of the marketing order regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Assessments upon handlers of fresh prunes are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by August 24, 2009.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or e-mail: *Robert.Curry@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 924 (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington-Oregon prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Washington-Oregon prunes beginning April 1, 2009, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2009–10 and subsequent fiscal periods from $1.00 to $2.00 per ton for Washington-Oregon prunes handled under the order.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of prunes in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of $1.00 per ton of prunes handled. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 2, 2009, and unanimously recommended 2009–10 expenditures of $8,893. The major expenditures recommended by the

Committee for the 2009–10 fiscal period include $4,800 for the management fee, $800 for Committee travel, $100 for compliance, $2,000 for the financial audit, and $1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, the $6,893 budget approved for the 2008–09 fiscal period included $4,800 for the management fee, $800 for travel expenses, $100 for compliance, and $1,150 for audits, equipment maintenance, insurance, bonds, and miscellaneous expenses. The major increase in expenses this year is in the audit category.

The assessment rate recommended by the Committee was derived by dividing the anticipated expenses of $8,893 by the projected 2009 4,400 ton prune production. Applying the $2.00 per ton assessment rate to this crop estimate should provide $8,800 in assessment income, which, in addition to a small draw of approximately $93.00 from the Committee's monetary reserve should adequately cover the budgeted expenditures. The reserve balance at the end of the 2008–09 fiscal period was $5,160. The estimated 2009–10 year-end reserve is $5,067, which is within the order's limit of approximately one fiscal period's operational expenses. The Committee recommended the higher assessment rate in order that the budgeted expenditures—$2,000 higher than the 2008–09 approved budget—are adequately covered and that the current reserve balance is maintained.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be effective for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2009–10 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 215 producers of fresh prunes in the regulated production area and approximately 10 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

Based on information compiled by both the Committee and the National Agricultural Statistics Service, the average annual revenue from the sale of fresh prunes was approximately $7,930 per producer in 2008. This estimate is based on 215 producers with a total production of about 3,514 tons of fresh prunes selling for an average of $485 per ton. In addition, based on AMS Market News Service reports that 2008 f.o.b. prices ranged from $17.00 to $19.00 per 30-pound container, the entire Washington-Oregon fresh prune industry handled less than $7,000,000 worth of prunes last season. In view of the foregoing, the majority of Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent fiscal periods from $1.00 to $2.00 per ton for prunes handled under the order's authority. The Committee also unanimously recommended 2009–10 expenditures of $8,893, which is $2,000 higher than the $6,893 budget approved for the 2008–09 fiscal period. When the recommended $2.00 per ton assessment rate is levied against the 2009–10 prune crop estimate of 4,400 tons, the Committee expects assessment income of about $8,800. The Committee recommended the higher assessment rate to help ensure that the 2009–10 budgeted expenses are adequately covered and that the current reserve balance is maintained. With the 4,400 crop estimate this year, the Committee would have realized income of about $4,400 without the assessment rate increase. This would have forced the Committee to draw approximately $4,493 from its $5,160 reserve fund, leaving an inadequate amount in reserve.

The major expenditures recommended by the Committee for the 2009–10 fiscal period include $4,800 for the management fee, $800 for Committee travel, $100 for compliance, $2,000 for the financial audit, and $1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, the $6,893 budget approved for the 2008–09 fiscal period included $4,800 for the management fee, $800 for travel expenses, $100 for compliance, and $1,193 for audits, equipment maintenance, insurance, bonds, and miscellaneous expenses. The major increase in expenses this year is in the audit category.

The Committee discussed alternatives to this recommended assessment increase. Leaving the assessment rate at the current $1.00 per ton was discussed, but not considered since such a rate would not have generated income adequate to maintain the Committee's reserve at or about the current level.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2009–10 season could average about $500 per ton for fresh Washington and Oregon grown prunes. Therefore, the estimated assessment revenue for the 2009–10 fiscal period as a percentage of total producer revenue is 0.4 percent for Washington-Oregon prunes.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order.

In addition, the Committee's meeting was widely publicized throughout the Washington prune industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the June 2, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally,

interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington-Oregon prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Additionally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2009–10 fiscal period began on April 1, 2009, and the order requires that the assessment rate for each fiscal period apply to all assessable prunes handled during such fiscal period; (2) the Washington-Oregon prune harvest and shipping season is expected to begin in early August; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (4) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 924

Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 924 is proposed to be amended as follows:

PART 924—PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On or after April 1, 2009, an assessment rate of $2.00 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 20, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–17601 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AD63

National Credit Union Share Insurance Fund Premium and One Percent Deposit

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Section 741.4 of NCUA's rules describes the procedures for the capitalization and maintenance of the National Credit Union Share Insurance Fund (NCUSIF). The current rule, however, does not adequately address how credit unions that enter or depart the NCUSIF system in a given calendar year are affected by any NCUSIF premium or deposit replenishment assessments in that same year. Due to the unprecedented level of NCUSIF expenses in 2009, which required the NCUA to announce both such assessments, NCUA is now proposing amendments to § 741.4 to clarify these procedures. The proposal makes other minor changes to 741.4 and conforming changes to § 701.6 relating to the payment of operating fees by Federal credit unions.

DATES: Comments must be received by August 24, 2009.

ADDRESSES: You may submit comments by any of the following methods. (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Insurance Premium and One Percent Deposit'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540; and Paul Peterson, Director, Applications Section, Office of General Counsel, National Credit Union Administration, at the same address and telephone number.

SUPPLEMENTARY INFORMATION:

A. Background

Congress created the National Credit Union Share Insurance Fund (NCUSIF) in 1970 to provide share insurance coverage to all Federal credit unions and to those State chartered credit unions that apply and meet minimum qualification standards. The NCUSIF provides insurance coverage for each of an insured credit union's members, similar to the coverage provided by the Federal Deposit Insurance Corporation's (FDIC's) Deposit Insurance Fund (DIF).

Unlike the DIF, however, the NCUSIF was not capitalized at its inception by tax revenues. From 1971 through 1980, the capital of the NCUSIF was established solely through the annual insurance premium contributions of insured credit unions. During the period from 1971 through the end of calendar year 1980, the capital of the fund (*i.e.,*

equity as a percentage of insured shares) grew, but the years 1981–1983 saw a reversal of this trend, due to both record share growth in insured credit unions and liquidation and problem credit union expenses. As an alternative to the premium approach to establishing a strong and viable insurance fund, the NCUA Board developed a legislative proposal which, with the support of the entire credit union system, Congress enacted in 1984. The NCUSIF was then capitalized with a deposit by each credit union of an amount equaling one percent of the credit union's total insured shares.

As required by the 1984 legislation, and subsequent amendments in 1998, NCUA maintains the NCUSIF's equity ratio at a percentage between 1.2% and 1.5%, but no greater than the normal operating level as established from time to time by the Board. If the NCUSIF's equity ratio exceeds this normal operating level at the end of any given year, NCUA will, generally, distribute any excess funds to insured credit unions. If the NCUSIF's equity ratio falls below 1.2%, the NCUSIF must assess a premium, and if the ratio falls below 1.0%, depleting the one percent deposit provided by each credit union, the NCUSIF must also assess an amount sufficient to replenish the one percent deposit.

In 1984, the Board adopted a rule establishing procedures for the capitalization and maintenance of the NCUSIF. 49 FR 40561 (Oct. 17, 1984). The rule, originally codified at 12 CFR 741.5 but now located in § 741.4, dealt broadly with five issues: (1) The funding of the one percent deposit, (2) the return of the deposit, (3) the use of the deposit by the NCUSIF and its replenishment by insured credit unions, (4) the insurance agreement, and (5) NCUA reports to Congress.

The content of § 741.4 today is much the same as its 1984 counterpart, having been modified only slightly in the past 25 years. For example, while the current rule addresses some issues associated with the expense and replenishment of the one percent deposit, it does not contain much detail on this issue.[1] In addition, the current rule does not adequately address how credit unions that enter or depart the NCUSIF system, such as through insurance or bank conversions, are affected by NCUSIF premium or deposit replenishment assessments in that same calendar year. Due to the unprecedented level of NCUSIF expenses in 2009, which required the NCUA to announce both premium and deposit replenishment assessments, NCUA is now proposing amendments to § 741.4 to clarify these issues and other related issues.

B. Relevant Statutory Provisions

The Federal Credit Union Act contains several relevant provisions on the return and replenishment of the one percent deposit and the timing and amount of NCUSIF premiums. These provisions are set forth below.

With regard to the deposit, Section 202(c)(1)(A) of the Act states:

> Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares. * * *

12 U.S.C. 1782(c)(1)(A). Section 202(c)(1)(B) of the Act also states:

> (i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.
>
> (ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.
>
> (iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.
>
> (iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

12 U.S.C. 1782(c)(1)(B). With regard to the premium, Section 202(c)(2) of the Act states:

> (A) In general. Each insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).
>
> (B) Relation of premium charge to equity ratio of fund. The Board may assess a premium charge only if—
>
> (i) the Fund's equity ratio is less than 1.3 percent; and
>
> (ii) the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.
>
> (C) Premium charge required if equity ratio falls below 1.2 percent. If the Fund's equity ratio is less than 1.2 percent, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

12 U.S.C. 1782(c)(2). Section 206(d)(3) of the Act also states:

> In the event of a conversion of a credit union from status as an insured credit union under this Act under subsection (a)(2) of this section, premium charges payable under section 202(c) of this Act shall be reduced by an amount proportionate to the number of calendar months for which the converting credit union will no longer be insured under this Act . * * *

12 U.S.C. 1786(d)(3). Subsection (a)(2) in the quotation above refers to the conversion from a federally-insured credit union to a nonfederally-insured credit union.

C. Proposed Amendments to Section 741.4

The proposal includes several amendments to clarify the NCUSIF premium and deposit replenishment obligations and procedures for credit unions and other entities that enter or depart from NCUSIF coverage. Most of these proposed amendments are located in § 741.4(i), Conversion to Federal insurance, and § 741.4(j), Conversion from, or termination of, Federal share insurance. The Board is, however, also proposing minor changes to other paragraphs in § 741.4. A paragraph-by-paragraph description and discussion of all the proposed amendments follows.

Paragraph (a)—Scope

Section 741.4 provides for the capitalization and maintenance of the NCUSIF. The proposal does not change the scope of § 741.4, and the proposal does not amend this paragraph.

Paragraph (b)—Definitions

The proposal includes three amendments to the existing definitions.

The proposal amends the definition of *insured shares* to include, for a credit union or other entity that is not federally insured, the amount of deposits of shares that would have been insured by the NCUSIF had the institution been federally insured on the date of measurement. This amended definition is necessary for calculating

[1] The preamble to the proposed rule in 1984 stated:

> The legislation provides that the NCUSIF may utilize the deposit funds if necessary to meet its expenses, in which case the amount used is to be expensed and replenished by insured credit unions in accordance with procedures established by the Board. Given the history of the Fund and the condition of insured credit unions, it seems unnecessary to anticipate at this time any possible utilization of the deposit funds to meet the Fund's expenses. This authority is clearly intended to meet a catastrophic economic set of circumstances, as evidenced by the fact that it can only be exercised after the Fund has utilized all investment income and all of its 0.3% nondeposit equity. Thus, ample time would exist for development of expense and replenishment procedures and guidelines. Accordingly, such procedures are not proposed at this time.

49 FR 30740 (Aug. 1, 1984).

NCUSIF premiums, deposit replenishments, and equity distributions for entities that enter the NCUSIF insurance system.

The proposal adds a definition of the term *premium/distribution ratio* as the number of full remaining months in the calendar year following the date of the institution's conversion or merger, divided by 12. This term is used in the NCUSIF premium, deposit replenishment, and equity distribution calculations involving credit unions and other entities that enter the NCUSIF insurance system. The ratio represents the fraction of the year that an institution entering the NCUSIF system was insured by the NCUSIF.

The proposal also adds a definition of the term *modified premium/distribution ratio* as one minus the premium/distribution ratio. This term is used in the NCUSIF premium, deposit replenishment, and equity distribution calculations involving credit unions that depart the NCUSIF insurance system. This ratio represents the fraction of the year that an institution departing the NCUSIF system was insured by the NCUSIF.

Also, the proposal deletes the paragraph numbers in the current version, consistent with Office of the Federal Register drafting recommendations for definitions sections that list the terms defined in alphabetical order.

Paragraph (c)—One Percent Deposit

This paragraph describes the one percent deposit requirement and the periodic adjustments based on changes in insured shares. For credit unions with less than $50 million in assets, the adjustments occur after the annual reporting period ending on December 31. For credit unions with $50 million or more in assets, the adjustments occur after the semiannual reporting periods ending on June 30 and December 31 each year.

The proposal does not amend this paragraph.

Paragraph (d)—Insurance Premium Charges

Paragraph (d)(1) provides that the Board may assess premium charges, in an amount stated as a percentage of insured shares, no more than twice annually. Subparagraph (d)(2)(i) states the relation of the premium charge to the equity ratio. The proposal does not amend these provisions.

Subparagraph (d)(2)(ii) states that if the ratio of the NCUSIF falls below 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent. This provision is confusing because it does not delineate between premium assessments and assessments to replenish the one percent deposit as required by § 202 of the Federal Credit Union Act. Accordingly, the proposal amends subparagraph(d)(2)(ii) to read as follows:

> If the equity ratio of the NCUSIF falls to between 1.0 and 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to restore the equity ratio to, and maintain that ratio at, at least 1.2 percent. If the equity ratio of the NCUSIF falls below 1.0 percent, the NCUA Board is required to assess a deposit replenishment charge in an amount it determines is necessary to restore the equity ratio to 1.0 percent and to assess a premium charge in an amount it determines is necessary to restore the equity ratio to, and maintain the ratio at, at least 1.2 percent.

Paragraph (e)—Distribution of NCUSIF Equity

This paragraph describes the mandatory year-end distribution of NCUSIF equity when the NCUSIF exceeds both its normal operating level and its available assets ratio as described in § 202(c)(3) of the Federal Credit Union Act. The proposal does not amend this paragraph.

Paragraph (f)—Invoices

This paragraph describes invoices for premiums and deposit adjustments. For clarity, the proposal amends this paragraph to specifically include invoices for deposit replenishment.

Paragraph (g)—New Charters

This paragraph permits new charters to delay the funding of their one percent deposit until the year following their chartering. The proposal does not amend this paragraph.

Paragraph (h)—Depletion of One Percent Deposit

The proposal adds a new paragraph(h) to read as follows:

> Depletion of one percent deposit. All or part of the one percent deposit may be used by the NCUSIF if necessary to meet its expenses, and the fund will expense the amount so used. The NCUSIF may invoice credit unions in an amount necessary to replenish the one percent deposit at any time following the effective date of the depletion, but must invoice credit unions no later than the adjustment described in paragraph (c) of this section based on insured shares as of December 31 of the year of the depletion.

The first sentence of this provision restates the Board's authority under § 202(c)(1)(B)(iv) of the Federal Credit Union Act. The second sentence clarifies that NCUA may invoice insured credit unions for the deposit replenishment at any time after the deposit has been depleted, but requires that NCUA send the invoice no later than the date NCUA first adjusts the deposit for changes in insured share levels in the year following the depletion.

The proposal takes the current paragraph (h), entitled *Conversion to Federal Insurance,* expands on that paragraph, and incorporates it into the proposed paragraph (i). This is discussed further below.

Paragraph (i)—Conversion to Federal Insurance

The proposal amends paragraph (i) to address, in detail, how a nonfederally insured credit union that converts to Federal insurance is affected by a NCUSIF declaration of a premium assessment, deposit replenishment assessment, or an equity distribution. Paragraph (i)(1) addresses a direct conversion to Federal insurance, and paragraph (i)(2) addresses an indirect conversion through the merger of a nonfederally insured credit union or entity into a federally insured credit union. The term ''merger'' includes not only mergers but also purchase and assumption transactions in which the continuing credit union obtains all, or substantially all, of the assets of the other entity. The current paragraph (i), entitled *Mergers of nonfederally insured credit unions,* is expanded and subsumed into the proposed paragraph (i)(2).

This proposed paragraph (i), along with the proposed paragraph (j), constitute the most significant and complex of the proposed amendments to § 741.4. Accordingly, the discussion below is detailed and includes hypotheticals illustrating each subparagraph.

Proposed paragraph (i)(1) addresses a direct conversion to NCUSIF insurance. Proposed paragraph (i)(1)(i) provides that:

> A credit union or other institution that converts to insurance coverage with the NCUSIF will: (i) Immediately fund its one percent deposit based on the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion. * * *

To illustrate the application of this provision, consider the following hypothetical. Assume Main Street Credit Union completes its conversion from nonfederal to Federal insurance on May 15 of Year One. Assume further that Main Street credit union had 1,000 insured shares for the end of month in December of the previous year (Year zero), 1,100 insured shares at the end of

May, the month of conversion, and 1,200 insured shares at the end of June. This information is presented in this Table A: [2]

TABLE A

	End of month, December, Year Zero	End of month, May, Year One (month conversion completed)	End of month, June, Year One
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200

Proposed paragraph (i)(1)(i) requires that on the date of its conversion, Main Street fund its one percent deposit based on ''the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion.'' Since Main Street has less than $50,000,000 in assets, its reporting period is annual, and ends on December 31. 12 CFR 741.4(b)(6) (definition of ''reporting period''). Main Street had $1,000 in insured shares on that date, and one percent of that is $10, and so that is the amount Main Street must immediately remit to the NCUSIF to establish its one percent deposit.

Proposed paragraph (i)(1)(ii) provides that:

> A credit union or other institution that converts to insurance coverage with the NCUSIF will: * * * (ii) If the NCUSIF assesses a premium in the calendar year of conversion, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio. * * *

To illustrate the application of paragraph (i)(1)(ii), take the same facts in hypothetical A related to the conversion of Main Street from nonfederal to Federal insurance. Now, further assume that on the previous March 15, NCUA had declared a premium assessment, and on September 15 following the conversion NCUA sent out the invoices for the March 15 assessment. Also assume that Main Street had grown to 1,300 insured shares at the end of September, the month the invoices were sent to Main Street and other credit unions. This information is presented in this Table B:

TABLE B

	End of month, December, Year Zero	End of month, May, Year One (month conversion completed)	End of month, June, Year One	End of month September, Year One (month invoice sent)
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200	1,300

Paragraph (i)(1)(ii) requires Main Street pay a premium based on the institution's ''insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio.'' Again, because Main Street is under $50 million in assets, the most recently ended reporting period preceding the September 15 invoice date is all the way back to December of Year Zero, when Main Street had $1,000 in shares. Main Street's ''premium/distribution ratio,'' as defined in proposed § 741.4(b)(5), is ''the number of full remaining months in the calendar year following the date of the institution's conversion or merger divided by 12.'' Since Main Street completed its conversion in May, there are seven full months remaining in the calendar year (June through December), and Main Street's premium/distribution ratio is seven divided by 12. Accordingly, Main Street's premium will be assessed on $1,000 times seven divided by 12, or about $583.[3] Note that if Main Street's assets had exceeded $50 million as of June 30, it would have had semiannual reporting periods under § 741.4(b)(6), and its ''insured shares as of the last day of the most recently ended reporting period preceding the invoice date'' would have been its insured shares as of June 30, Year One, and not as of December 31, Year Zero.

Proposed paragraphs (i)(1)(iii) and (iv) describe the responsibility of a credit union or other entity converting to Federal insurance to replenish a depleted NCUSIF deposit, as follows:

> A credit union or other institution that converts to insurance coverage with the NCUSIF will * * * (iii) If the NCUSIF declares, in the calendar year of conversion but on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment; (iv) If the NCUSIF declares, at any time after the date of conversion through the end of that calendar year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date. * * *

Paragraph (i)(1)(iii) clarifies that a converting credit union has no responsibility to pay anything toward the replenishment of a depleted deposit that is declared on or before the date of conversion, even if NCUA sends out invoices related to the depletion after the date of conversion. Paragraph (i)(1)(iv) requires that a converting credit union replenish its deposit with regard to a depletion declared after the date of conversion through the end of the calendar year. Again, assume the same facts for Main Street as in Table B, but that the deposit depletion was announced in June, after Main Street converted, and that NCUA sent the invoices in September.

[2] Although Main Street Credit Union was not Federally insured as of December 31 of Year Zero, proposed 741.4(b)(3) provides that ''For a credit union or other entity that is not Federally insured, 'insured shares' means, for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been Federally insured on the date of measurement.''

[3] Main Street's actual premium charge will be this $583 divided by the aggregate insured shares of all Federally insured credit unions times the aggregate premium for all Federally insured credit unions.

TABLE B

	End of month, December, Year Zero	End of month, May, Year One (month conversion completed)	End of month, June, Year One	End of month September, Year One (month invoice sent)
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200	1,300

Main Street would receive an invoice amount ''based on the [Main Street's] insured shares as of the last day of the most recently ended reporting period preceding the invoice date.'' Since Main Street has less than $50 million in shares, the most recently ended reporting period preceding the September invoice date was December 31, Year Zero, and it would pay for the replenishment based on $1,000 in insured shares. If Main Street, however, had had $50 million or more in assets on June 30, its most recently ended reporting period preceding the invoice date would have been the semiannual period ending on June 30, and Main Street would have used its insured shares as of June 30 to calculate the replenishment amount due to the NCUSIF.

Under the Federal Credit Union Act, distributions, if any, are declared once a year, early in the year, based on excess funds in the NCUSIF as of the prior December 31. Proposed paragraph (i)(1)(v) describes the right of a credit union or other entity converting to Federal insurance to receive a distribution from the NCUSIF, specifically:

> (1) A credit union or other institution that converts to insurance coverage with the NCUSIF will: * * * (v) If the NCUSIF declares a distribution in the year following conversion based the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity at the end of the preceding year, the converting institution will receive no distribution.

To illustrate how proposed paragraph (i)(1)(v) works, assume that Main Street Credit Union converts to Federal insurance in May of Year One, and that the NCUA declares a distribution in January of Year Two based on the NCUSIF equity as of December 31 of Year One. Then Main Street will be entitled to a pro rata portion of the distribution, calculated on its insured shares as of December 31 of Year One times its premium/distribution ratio. Since it converted in May of Year One, and there were seven full months remaining in Year One at on the date of conversion, Main Street's premium/distribution ratio under proposed § 741.4(b)(6) equals seven divided by 12.

On the other hand, if the NCUA declared a distribution a year earlier, that is, in January of Year One based on the NCUSIF's equity ratio as of December 31 in Year Zero, then under proposed paragraph (i)(1)(v) Main Street would receive no part of this distribution. Main Street is not entitled to any part of this distribution because Main Street, which completed its conversion in Year One, did not contribute in any way to the excess funds in the NCUSIF as of the end of Year Zero.

While proposed paragraph (i)(1), and the examples given above, involve the conversion of a credit union or entity directly to Federal insurance with the NCUSIF, such conversions can also happen indirectly through the merger of a nonfederally insured credit union or entity into a federally insured credit union.

Proposed paragraph (i)(2) addresses the NCUSIF premiums, deposit replenishments, and distributions in this context.

Proposed paragraph (i)(2)(i) provides that:

> (2) A federally insured credit union that merges with a nonfederally-insured credit union or other non-federally insured institution (the ''merging institution''), where the federally-insured credit union is the continuing institution, will: (i) Immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger * * *.

To illustrate this provision, and the other provisions of paragraph (i)(2) related to mergers of nonfederally insured entities into federally-insured credit unions, consider the following hypothetical. Nonfederally-insured Credit Union A merges into federally-insured Credit Union B on August 15 of Year One. The relevant insured shares of Credit Union A and Credit Union B at various dates before and after the merger are reflected in Table D:

TABLE D

	End of month December, Year Zero	End of month June, Year One	End of month August, Year One (month merger completed)	End of month September, Year One (month invoice sent)
Credit Union A insured shares	1,000	1,100	N/A	N/A
Credit Union B insured shares	9,000	9,900	12,900	14,000

Proposed paragraph (i)(2)(i) requires that Credit Union B, the continuing credit union, immediately increase the amount of its deposit with the NCUSIF in an amount ''equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger.'' Since Credit Union A, the merging institution, has less than $50 million in assets, its reporting period is the calendar year, and its most recently ended reporting period preceding the August merger date is December 31 in Year Zero. Credit Union A had $1,000 in insured shares on that date. Accordingly, Credit Union B, the continuing credit union, must immediately increase the amount of its deposit with the NCUSIF by one percent

of $1,000, or $10. Note that if Credit Union A had been a larger credit union, with $50 million or more in assets on June 30 in Year One, then Credit Union B would have used Credit Union A's insured shares as of June 30 in this calculation.

Proposed paragraph (i)(2)(ii), relating to NCUSIF premium assessments, provides that the continuing institution will:

> (ii) With regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution's insured shares as described in subparagraph (1)(ii) above, and the other part calculated on the continuing institution's insured shares as of the last day of its most recently ended reporting period preceding the date of merger. * * *

Paragraph (i)(2)(ii) provides for a two-part calculation, with the first part relating to the merging credit union and the second part relating to the continuing credit union. If we assume the facts as in Table D, and assume the premium is assessed sometime in Year One, then we calculate the insured shares of Credit Union A, the merging credit union, as we did in the example for paragraph (i)(1)(ii), which would be $583. Then we calculate the insured shares of Credit Union B, the continuing credit union, ''as of the last day of its most recently ended reporting period preceding the merger date.'' Since Credit Union B is also under $50 million in assets, ''the last day of the most recently ended reporting period'' is also December 31 of Year Zero. Credit Union B's insured shares on that date were $9,000, and so the combined insured shares for purposes of the premium assessment is $9,583. Note that if Credit Union B had $50 million or more in assets on June 30 of Year One, then Credit Union B's ''most recently ended reporting period preceding the merger date'' would have been June 30 of Year One, and not December 31 of Year Zero. The Board is aware that the NCUA might declare a NCUSIF premium, invoice it, and receive the premiums in Year One from the continuing institution before the continuing institution consummates its merger. In that case, the Board would invoice the continuing credit union again after the merger, but only for the difference between the amount previously invoiced and the amount calculated under proposed paragraph (i)(2)(ii).

Proposed paragraph (i)(2)(iii) prescribes the procedures for calculating the NCUSIF distribution when a nonfederally-insured credit union or entity merges into a federally insured credit union. Proposed paragraph (i)(2)(iii) provides that the federally-insured credit union will:

> [i]f the NCUSIF declares a distribution in the year following the merger based on the NCUSIF's equity at the end of the year of merger, receive a distribution based on the continuing institution's insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF's equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

This formula recognizes that the merging institution did not contribute to the NCUSIF equity as of the end of the year preceding the merger and so no distribution is allotted against the merging institution's shares. As for distributions based on the NCUSIF equity at the end of the year of merger, this formula does not include any pro rata reduction for the merging institution's contribution. The Board determined that a pro rata reduction was unnecessary, given the generally small relative size of merging institutions to continuing institutions, and the fact that the Federal Credit Union Act does not require any sort of pro rata reduction or other pro rata calculation with regard to distributions.

For credit unions converting to NCUSIF coverage, the proposal changes the date for calculating the one percent deposit from insured shares as of the close of the month before conversion to insured shares as of the most recently ended reporting period before conversion. NCUA is proposing this change to make the calculation method for credit unions entering NCUSIF consistent with the calculation method for federally-insured credit unions' one percent deposit adjustment. Likewise, for federally-insured credit unions merging with nonfederally-insured credit unions, the proposal clarifies that the date used for calculation of the merged credit union's increased one percent is insured shares of the nonfederally-insured credit union as of the most recently ended reporting period before conversion. Again, this change makes the calculation method for credit unions increasing insured shares by merger consistent with the calculation method for federally-insured credit unions' one percent deposit adjustment.

Paragraph (j)—Conversion From, or Termination of, Federal Share Insurance

The proposal amends paragraph (j) to address, in detail, how a federally insured credit union that converts to insurance other than that provided by the NCUSIF, or that loses or terminates its NCUSIF insurance, is affected by a NCUSIF declaration of a premium assessment, deposit replenishment assessment, or equity distribution. Proposed subparagraph (j)(1) addresses direct insurance conversions and conversions by merger. Proposed subparagraph (j)(2) addresses liquidations and insurance termination.

Proposed paragraph (j)(1)(i) provides that:

> A federally-insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will: (i) Receive the full amount of its NCUSIF deposit, less any announced depletion, immediately after the final date on which any shares of the credit union are NCUSIF-insured. * * *

The current paragraph (j) does not mention the possibility of deposit depletion, and this has been clarified in the proposed paragraph (j). To illustrate the application of this paragraph (j)(1)(i), consider the following hypothetical. Assume Anytown Credit Union, a credit union with $30 million in assets, converts from Federal to nonfederal insurance on November 15. Also assume Anytown Credit Union had $20 million in insured shares as of the previous December 31, the end of its most recent reporting period. 12 CFR 741.4(b)(5), (c). The NCUSIF would return one percent of $20 million, or $200,000 to Anytown Credit Union immediately following the effective date of its conversion. Note that, if Anytown Credit Union had reported $50 million or more in assets on June 30, then June 30 would have been the end of its most recent reporting period. Now further assume that, on July 15 of that same year, the NCUSIF had announced an expense that reduced the equity ratio from 1.3 to .75, which would have included a write-off (depletion) of 25 percent, or 25 basis points, of the one percent deposit. The amount of the deposit returned to Anytown would be reduced by 25 percent, from $200,000 to $150,000. If the NCUSIF had announced expenses reducing the equity ratio to .75 after the November 15 conversion date, this announcement would have no effect on Anytown and it would still receive $200,000 from the NCUSIF.

Proposed paragraph (j)(1)(ii) provides that:

> A federally-insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will: * * * (ii) If the NCUSIF declares a distribution at the end of the calendar year

of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio. * * *

To illustrate the application of this paragraph (j)(1)(ii), again assume Anytown Credit Union converts to nonfederal insurance on November 15, and in January of the following year, the NCUSIF declares a distribution based on the NCUSIF's equity ratio as of December 31. Anytown would receive a pro rata distribution calculated as its $20 million in insured shares multiplied by the modified premium/distribution ratio. Anytown's modified premium/distribution ratio, from the definition in § 741.4(b)(5), is one minus Anytown's premium/distribution ratio, which is one minus the ratio of the full number of months remaining in the year divided by twelve, which is one minus (one divided by twelve), which is eleven divided by twelve. So Anytown would receive a pro rata distribution based on $20 million of insured shares times eleven twelfths, or about $18.33 million in shares.[4]

The current rule provides credit unions departing the NCUSIF system with the option to leave ''a nominal sum on deposit with NCUSIF until the next distribution from NCUSIF equity and will thus qualify for a prorated share of the distribution.'' For several reasons, the proposal eliminates this option. First, the current rule is ambiguous because it does not specify how the requisite nominal sum is calculated or how the prorated share of future distributions is calculated. Second, this option, if exercised, imposes a lengthy recordkeeping burden on the NCUSIF, as it can be many years between NCUSIF equity distributions. Third, although several credit unions have departed the NCUSIF system in recent years, the Board is not aware that any of these credit unions exercised this option. Finally, the proposed amendments will allow credit unions departing the NCUSIF to receive a pro rata share of any future distribution *without* leaving any sum on deposit with the NCUSIF, but only for a dividend declared on NCUSIF equity as of the close of the year of departure. The Board believes this simplification is appropriate, particularly since the contribution of a departing credit union to future distributions diminishes with the passage of time.

[4] Anytown's actual distribution would be $18.33 million times the aggregate amount of the distribution divided by the aggregate amount of all insured shares at all federally insured credit unions.

Proposed paragraph (j)(1)(iii) provides that:

> A federally-insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will: * * * (iii) If the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the difference following completion of the conversion or merger.

To illustrate these premium provisions, again assume Anytown Credit Union is a credit union with $30 million in assets that converts from Federal to nonfederal insurance on November 15 of Year One, and that Anytown Credit Union had $20 million in insured shares as of the previous December 31 (of Year Zero), the end of its most recent reporting period. Further assume that NCUA declares a premium on February 12 of Year One and invoices the premium on November 15. Since the premium was declared ''on or before the day in which [Anytown's] conversion [was] completed,'' § 741.4(i)(1)(iii) applies. Anytown would then pay a premium based on $20 million (its ''insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date'') times eleven twelfths (its ''modified premium/distribution ratio''), or about $18.33 million. Note that NCUA might have already have invoiced Anytown for the premium sometime between February 12 and Anytown's merger on November 15. If so, Anytown will likely receive a refund of some of this earlier premium, as provided in the last sentence of § 741.1(i)(1)(iii), since it may have overpaid the earlier premium.

Proposed paragraph (j)(2), dealing with liquidations, states the following:

> Notwithstanding the requirements of paragraph (j)(1) of this section: (i) Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit; (ii) Any solvent credit union that is closed due to voluntary or involuntary liquidation will be entitled to a return of its deposit, less any announced depletion, prior to final distribution of member shares; and (iii) The Board reserves the right to delay return of the deposit to any credit union converting from or terminating its Federal insurance, or voluntarily liquidating, for up to one year if the Board determines that immediate repayment would jeopardize the NCUSIF.

These provisions are identical to provisions in the current paragraph (j), except that the proposal adds the phrase ''less any announced depletion'' in paragraph (j)(2)(ii) for clarity.

Paragraph (k)—Assessment of Administrative Fee and Interest for Delinquent Payment

This paragraph describes procedures for assessing fees for delinquent payments of the capitalization deposit and insurance premium. The proposal clarifies that paragraph (k) applies to delinquent deposit replenishment payments as well as premium payments. The proposal also deletes overlapping provisions for imposing both the ''costs of collection'' and an ''administrative fee'' in the current rule and changes the interest rate to a fixed rate of six percent per year. The delinquency fee will be calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid. The Office of the Chief Financial Officer has determined that switching to a fixed rate and imposing the delinquency fee based on the number of days the balance is outstanding will allow NCUA to automate the billing process, thus eliminating the need for additional administrative fees.

Finally, the proposal restates provisions from the Act that: (a) Give the Board authority to collect a penalty of up to $20,000 per day for each day the balance related to a premium or deposit remains unpaid; and (b) prohibit insured credit unions from paying dividends or distributing assets while in default on insurance deposits or premiums, with possible punishment of fines up to $1,000 or imprisonment of one year for directors or officers who knowingly violate this prohibition.

D. Temporary Corporate Credit Union Stabilization Fund

In the Spring of 2009, Congress enacted the ''Helping Families Save Their Homes Act of 2009,'' Pub. L. 111–22. Section 204(f) of that Act established the Temporary Corporate Credit Union Stabilization Fund (CCSUF).

The CCUSF is separate from the NCUSIF, and the CCUSF will make assessments on federally-insured credit unions separate and apart from any NCUSIF assessments. The CCUSF, unlike the NCUSIF, is funded by Treasury borrowings and not credit union capitalization deposits. Accordingly, the CCUSF does not make assessments to replenish capital deposits, nor does it make assessments

to reestablish a particular equity ratio. Instead, the CCUSF only makes assessments on insured credit unions as necessary to repay CCUSF borrowings from the Treasury. Accordingly, much of § 741.4 of NCUA's rules is inapplicable to the CCUSF, and the CCUSF is not specifically addressed in the text of this rulemaking.

While the obligation of a particular credit union to replenish its NCUSIF deposit or make a NCUSIF premium payment can be rather complicated, the obligation for a particular credit union to pay a particular CCUSF assessment is straightforward. CCUSF assessments are effective on the date the NCUA Board acts to order an assessment as authorized by Public Law 111–22. Any credit union whose shares are covered by Federal insurance on that date must pay its share of that particular assessment; but any credit union that is not covered by Federal insurance on that date is not obligated to pay any part of that assessment. The dollar amount of each credit union's portion of a CCUSF assessment is calculated based on that credit union's insured shares as of the end of its last reporting period preceding the date of the Board action.

E. Proposed Amendment to Section 701.6

Section 701.6(d) of NCUA's regulations addresses delinquent payment of the operating fee paid by FCUs. The proposal updates this section to parallel the revised provisions for delinquent payment of insurance premium and deposit replenishment expenses. As in § 741.4(k), the proposed amendments to § 701.6(d) delete potentially duplicative provisions allowing both administrative fees and costs of collection, and replace the variable interest rate with a fixed interest rate of six percent per year. The delinquency fee will be calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid.

F. 30-Day Comment Period

NCUA seeks public comment on the proposed amendments discussed above.

As a matter of agency policy, the NCUA Board general provides a 60-day comment period for proposed regulations. NCUA's Interpretive Ruling and Policy Statement (IRPS) 87–2, 52 FR 35231 (Sept. 18, 1987), as amended by IRPS 03–02, 68 FR 31949 (May 29, 2003). In this case, the NCUA Board believes a 30-day comment period will suffice because the proposal clarifies an existing rule.

NCUA also seeks comment on whether the examples that appear above illustrating the various proposed amendments should be placed in a formal Appendix and be published in the Code of Federal Regulations with the rule text.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This proposed rule clarifies existing requirements and will not impose any new regulatory requirements. The proposed rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the proposed rule would not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Operating fee.

List of Subjects in 12 CFR Part 741

Credit unions, insurance.

By the National Credit Union Administration Board on July 16, 2009.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth above, NCUA proposes to amend 12 CFR parts 701 and 741 as follows.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Revise paragraph (d) of § 701.6 to read as follows:

§ 701.6 Fees paid by Federal credit unions.

* * * * *

(d) *Assessment of interest for delinquent payment.* Each Federal credit union must pay to the Administration interest on any delinquent payment of its operating fee. A payment will be considered delinquent if it is post-marked later than the date stated in the notice to the credit union provided under § 701.6(c). The National Credit Union Administration may waive the collection of interest if circumstances warrant.

(1) The interest rate charged on any delinquent payment is six percent per annum of the unpaid balance for the number of days the balance remains unpaid. The delinquency fee is calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid.

(2) If a credit union makes a combined payment of its operating fee and its share insurance deposit and/or insurance premium as provided in § 741.4 of this chapter and such payment is delinquent, interest will be charged on the combined amount.

PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d: 31 U.S.C. 3717.

4. Revise § 741.4 to read as follows:

§ 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an insurance premium.

(b) *Definitions.* For purposes of this section:

Available assets ratio means the ratio of:

(i) The amount determined by subtracting all liabilities of the NCUSIF, including contingent liabilities for which no provision for losses has been made, from the sum of cash and the market value of unencumbered investments authorized under Section 203(c) of the Act (12 U.S.C. 1783(c)), to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the available assets ratio is:

$$\frac{\text{(cash + market value of unencumbered investments) } - \text{ (liabilities + contingent liabilities for which no provision for losses has been made)}}{\text{aggregate amount of all insured shares from final reporting period of calendar year}}$$

Equity ratio means the ratio of:

(i) The amount of NCUSIF's capitalization, meaning insured credit unions' one percent capitalization deposits plus the retained earnings balance of the NCUSIF (less contingent liabilities for which no provision for losses has been made) to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the equity ratio is:

$$\frac{\text{(insured credit unions' 1.0\% capitalization deposits + (NCUSIF's retained earnings } - \text{ contingent liabilities for which no provision for losses has been made)}}{\text{aggregate amount of all insured shares}}$$

Insured shares means the total amount of a federally-insured credit union's share, share draft and share certificate accounts, or their equivalent under State law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent State law), but does not include amounts in excess of insurance coverage as provided in part 745 of this chapter. For a credit union or other entity that is not federally insured, ''insured shares'' means, for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been federally insured on the date of measurement.

Modified premium/distribution ratio means one minus the premium/distribution ratio.

Normal operating level means an equity ratio not less than 1.2 percent and not more than 1.5 percent, as established by action of the NCUA Board.

Premium/distribution ratio means the number of full remaining months in the calendar year following the date of the institution's conversion or merger divided by 12.

Reporting period means calendar year for credit unions with total assets of less than $50,000,000 and means semiannual period for credit union with total assets of $50,000,000 or more.

(c) *One percent deposit.* Each insured credit union must maintain with the NCUSIF during each reporting period a deposit in an amount equaling one percent of the total of the credit union's insured shares at the close of the preceding reporting period. For credit unions with total assets of less than $50,000,000, insured shares will be measured and adjusted annually based on the insured shares reported in the credit union's semiannual 5300 report due in January of each year. For credit unions with total assets of $50,000,000 or more, insured shares will be measured and adjusted semiannually based on the insured shares reported in the credit union's quarterly 5300 reports due in January and July of each year.

(d) *Insurance premium charges.* (1) In general. Each insured credit union will pay to the NCUSIF, on dates the NCUA Board determines, but not more than twice in any calendar year, an insurance premium in an amount stated as a percentage of insured shares, which will be the same percentage for all insured credit unions.

(2) Relation of premium charge to equity ratio of NCUSIF. (i) The NCUA Board may assess a premium charge only if the NCUSIF's equity ratio is less than 1.3 percent and the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(ii) If the equity ratio of the NCUSIF falls to between 1.0 and 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to restore the equity ratio to, and maintain that ratio at, at least 1.2 percent. If the equity ratio of the NCUSIF falls below 1.0 percent, the NCUA Board is required to assess a deposit replenishment charge in an amount it determines is necessary to restore the equity ratio to 1.0 percent and to assess a premium charge in an amount it determines is necessary to restore the equity ratio to, and maintain the ratio at, at least 1.2 percent.

(e) *Distribution of NCUSIF equity.* If, as of the end of a calendar year, the NCUSIF exceeds its normal operating level and its available assets ratio exceeds 1.0 percent, the NCUA Board will make a proportionate distribution of NCUSIF equity to insured credit unions. The distribution will be the maximum amount possible that does not reduce the NCUSIF's equity ratio below its normal operating level and does not reduce its available assets ratio below 1.0 percent. The distribution will be after the calendar year and in the form determined by the NCUA Board. The form of the distribution may include a waiver of insurance premiums, premium rebates, or distributions from NCUSIF equity in the

form of dividends. The NCUA Board will use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the NCUSIF's equity ratio and available assets ratio for purposes of this paragraph.

(f) *Invoices.* The NCUA provides invoices to all federally insured credit unions stating any change in the amount of a credit union's one percent deposit and the computation and funding of any premium or deposit replenishment assessments due. Invoices for Federal credit unions also include any annual operating fees that are due. Invoices are calculated based on a credit union's insured shares as of the most recently ended reporting period. The invoices may also provide for any distribution the NCUA Board declares in accordance with paragraph (e) of this section, resulting in a single net transfer of funds between a credit union and the NCUA.

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the calendar year in which it has obtained its charter will not be required to pay an insurance premium for that calendar year. The credit union will fund its one percent deposit on a date to be determined by the NCUA Board in the following calendar year, but will not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Depletion of one percent deposit.* All or part of the one percent deposit may be used by the NCUSIF if necessary to meet its expenses, and the fund will expense the amount so used. The NCUSIF may invoice credit unions in an amount necessary to replenish the one percent deposit at any time following the effective date of the depletion, but must invoice credit unions no later than the adjustment described in paragraph (c) of this section based on insured shares as of December 31 of the year of the depletion.

(i) *Conversion to Federal insurance.*

(1) A credit union or other institution that converts to insurance coverage with the NCUSIF will:

(i) Immediately fund its one percent deposit based on the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion;

(ii) If the NCUSIF assesses a premium in the calendar year of conversion, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio;

(iii) If the NCUSIF declares, in the calendar year of conversion on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment;

(iv) If the NCUSIF declares, at any time after the date of conversion through the end of that calendar year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date; and

(v) If the NCUSIF declares a distribution in the year following conversion based the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity from the end of the preceding year, the converting institution will receive no distribution.

(2) A federally insured credit union that merges with a nonfederally-insured credit union or other non-federally insured institution (the ''merging institution''), where the federally-insured credit union is the continuing institution, will:

(i) Immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger;

(ii) With regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution's insured shares as described in subparagraph (1)(ii) above, and the other part calculated on the continuing institution's insured shares as of the last day of its most recently ended reporting period preceding the date of merger; and

(iii) If the NCUSIF declares a distribution in the year following the merger based the NCUSIF's equity at the end of the year of merger, receive a distribution based on the continuing institution's insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF's equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

(j) *Conversion from, or termination of, Federal share insurance.*

(1) A federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will:

(i) Receive the full amount of its NCUSIF deposit, less any announced depletion, immediately after the final date on which any shares of the credit union are NCUSIF-insured;

(ii) If the NCUSIF declares a distribution at the end of the calendar year of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio; and

(iii) If the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the difference following completion of the conversion or merger.

(2) Notwithstanding the requirements of paragraph (j)(1) of this section:

(i) Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit;

(ii) Any solvent credit union that is closed due to voluntary or involuntary liquidation will be entitled to a return of its deposit, less any announced depletion, prior to final distribution of member shares; and

(iii) The Board reserves the right to delay return of the deposit to any credit union converting from or terminating its Federal insurance, or voluntarily liquidating, for up to one year if the Board determines that immediate repayment would jeopardize the NCUSIF.

(k) *Assessment of interest and penalties for delinquent payment.*

(1) Each federally insured credit union must pay to the NCUA interest on any delinquent payment of its capitalization deposit, including any delinquent deposit replenishment, and on any delinquent insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union. The interest rate charged on any delinquent payment is six percent per annum of the unpaid

balance for the number of days after the due date the balance remains unpaid. The delinquency fee is calculated based on a 360-day year, that is, six percent times the unpaid balance divided by 360 times the number of days unpaid. The NCUA may waive or abate collection of interest, if circumstances warrant.

(2) The Act contains specific penalties and other consequences for delinquent payments, including, but not limited to:

(i) Section 202(d)(2)(B) of the Act (12 U.S.C. 1782(d)(2)(B)) provides that the Board may assess and collect a penalty from an insured credit union of not more than $20,000 for each day the credit union fails or refuses to pay any deposit or premium due to the fund; and

(ii) Section 202(d)(3) of the Act (12 U.S.C. 1782(d)(3)) provides, generally, that no insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge due to the fund. Section 202(d)(3) further provides that any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned more than one year, or both.

[FR Doc. E9–17310 Filed 7–23–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: There have been several cases of wing leading edge anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Upon investigation, it was determined that ducts manufactured since May 2000 are susceptible to cracking due to the process used to drill holes in the ducts. This cracking may cause air leakage, with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability, without annunciation to the flight crew [and consequent reduced controllability of the airplane]. It has subsequently been determined that faulty ducts may also have been installed in a number of leading edge assemblies built as spares and whose current locations are not specifically known.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 24, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On November 4, 2008, we issued AD 2008–23–16, Amendment 39–15737 (73 FR 67363, November 14, 2008). That AD required actions intended to address an unsafe condition on the products listed above. The preamble to AD 2008–23–16 explains that we consider those requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary to require the previously optional terminating action, and this proposed AD follows from that determination. Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, previously issued Canadian Airworthiness Directive CF–2008–30, dated October 7, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products.

The unsafe condition is cracked piccolo ducts, which could result in air leakage, a possible adverse effect on the anti-ice distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane. Required actions include revising the airplane

flight manual, inspecting to determine if certain anti-ice piccolo ducts are installed, and replacing or repairing the piccolo duct if necessary. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 711 products of U.S. registry.

The actions that are required by AD 2008–23–16 and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $80 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions on U.S. operators is $170, 640, or $240 per product.

We estimate that it would take about 12 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $682,560, or $960 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15737 (73 FR 67363, November 14, 2008) and adding the following new AD:

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD.

Comments Due Date

(a) We must receive comments by August 24, 2009.

Affected ADs

(b) The proposed AD supersedes AD 2008–23–16, Amendment 39–15737.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; serial numbers (S/Ns) 7003 through 7067 inclusive, 7069 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096, and 8097.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and rain protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There have been several cases of wing leading edge anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Upon investigation, it was determined that ducts manufactured since May 2000 are susceptible to cracking due to the process used to drill holes in the ducts. This cracking may cause air leakage, with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability, without annunciation to the flight crew [and consequent reduced controllability of the airplane].

The faulty ducts were installed on aircraft SN 7417 through 7990 and 8000 through 8055 in production, and as replacement parts on in service aircraft SN 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378 and 7381. Service Bulletin (SB) 601R–30–029, Revision B and AD CF–2005–26R1 previously covered the above aircraft serial numbers.

It has subsequently been determined that faulty ducts may also have been installed in a number of leading edge assemblies built as spares and whose current locations are not specifically known. As they may have been installed on any of the aircraft serial numbers in the Applicability section of this directive, checking of records and/or inspection * * * is now required for all applicable aircraft.

This directive, which supersedes and cancels AD CF–2005–26R1 [which corresponds to FAA AD 2005–17–12, amendment 39–14223], mandates the amendment of the Airplane Flight Manual (AFM) procedures, in addition to checking the part numbers and serial numbers of installed and spare wing anti-ice piccolo ducts, as required, and inspecting, replacing or repairing them as necessary. Terminating action is also introduced.

Required actions include revising the airplane flight manual, inspecting to determine if certain anti-ice piccolo ducts are installed, and replacing or repairing the piccolo duct if necessary.

Restatement of Requirements of AD 2005–17–12

Identification of Affected Piccolo Tubes

(f) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: Before the airplane accumulates 3,000 total flight hours, or within 14 days after September 7, 2005 (the effective date of AD 2005–17–12, which was superseded by AD 2008–23–16), whichever occurs later, determine whether any affected piccolo tube is installed on the airplane. Affected piccolo tubes are identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. Doing the action required by paragraph (p), (q), (r), (w), or (y) of this AD terminates the requirements of this paragraph.

Revision to Airplane Flight Manual (AFM)

(g) Unless already done, for airplanes with an affected or unidentifiable piccolo tube found during the action required by paragraph (f) of this AD: Before the airplane accumulates 3,000 total flight hours, or within 14 days after September 7, 2005, whichever occurs later, revise the Operating Limitations and Abnormal Procedures sections of the Canadair Regional Jet AFM, CSP A–012, to include the information in Canadair Temporary Revision (TR) RJ/155, dated July 5, 2005, as specified in the TR. This may be done by inserting a copy of the TR into the AFM. This TR introduces new procedures for operation in icing conditions. Operate the airplane according to the limitations and procedures in the TR except as required by paragraph (n) of this AD. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the TR. After the AFM revision required by paragraph (n) of this AD has been done, remove the AFM limitation specified in this paragraph.

Optional Inspections

(h) Unless already done, for airplanes with an affected or unidentifiable piccolo tube found during the action required by paragraph (f) of this AD: The operating limitations and abnormal procedures specified in Canadair TR RJ/155, dated July 5, 2005, as required by paragraph (g) of this AD, may be removed from the AFM, provided all requirements of this paragraph have been satisfied.

(1) A fluorescent dye penetrant inspection for cracks of the piccolo tubes is done and repeated thereafter within 2,000-flight-hour intervals in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. An inspection done before September 7, 2005, in accordance with Bombardier Service Bulletin 601R–30–029, dated June 17, 2005, is acceptable for compliance with the requirements of paragraph (h)(1) of this AD. Doing the inspection required by paragraph (u) of this AD terminates the actions required by this paragraph.

(2) All applicable corrective actions are done as specified in paragraph (j) of this AD.

AFM Limitations Required for Exceeding Inspection Interval

(i) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: During any period in which the inspection interval exceeds 2,000 flight hours after the initial inspection specified in paragraph (h)(1) of this AD, the airplane must be operated under the limitations and abnormal procedures specified in paragraph (g) of this AD. Doing the action required by paragraph (p), (q), (r), (w), or (y) of this AD terminates the requirements of this paragraph.

Corrective Action

(j) Unless already done, if any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, do the actions specified in paragraph (j)(1), (j)(2), (j)(3), (j)(4), or (j)(5) of this AD, except as required by paragraph (k) of this AD.

(1) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a new piccolo tube that has the same part number as identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, but that does not have a serial number listed in that paragraph.

(2) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a new piccolo tube that has a part number identified in the applicable Bombardier illustrated parts catalog but not identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, or with a new piccolo tube identified in paragraph (l) of this AD.

(3) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a piccolo tube that has been inspected in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, is not cracked, and has not accumulated any air time (hours time-in-service) since inspection.

(4) Replace the cracked piccolo tube with a piccolo tube that has been repaired in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE–172, FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); and has not accumulated any air time (hours time-in-service) since the repair.

(5) Reinstall the cracked piccolo tube and operate the airplane in accordance with a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent). Operation in accordance with the provisions of Master Minimum Equipment List (MMEL) entry 30–12–03 is acceptable for compliance with the requirements of this paragraph.

Exception to Service Bulletin Procedures

(k) Unless already done: Where Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, specifies that Bombardier may be contacted for information regarding repair, this AD requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent).

Optional Terminating Action for Paragraphs (f), (g), (h), (i), and (j)

(l) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: Installation, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, of a complete set of new inboard, center, and outboard piccolo tubes, as identified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, terminates the requirements of paragraphs (f), (g), (h), (i), and (j) of this AD. When these piccolo tubes have been installed, remove the Operating Limitations and Abnormal Procedures, if inserted in accordance with paragraph (g) of this AD, from the AFM.

(1) For the inboard piccolo tube: P/N 601–80032–7 (14432–107) and 601–80032–8 (14432–108).

(2) For the center piccolo tube: P/N 14464–105 and 14464–106.

(3) For the outboard piccolo tube: P/N 14463–109 and 14463–110.

Parts Installation

(m) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: As of September 7, 2005, no person may install, on any airplane, a piccolo tube having a P/N listed in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, unless the applicable

requirements of paragraphs (f) through (l) of this AD have been accomplished for that piccolo tube before the effective date of this AD or the requirements specified in paragraph (v) of this AD have been accomplished. As of December 1, 2008 (the effective date of AD 2008–23–16), the requirements of paragraph (v) of this AD must be followed.

Restatement of Requirements of AD 2008–23–16

Revision to AFM

(n) Unless already done: For all airplanes, within 14 days after December 1, 2008, revise the Operating Limitations and Abnormal Procedures sections of the Canadair Regional Jet AFM, CSP A–012, to include the information in Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, as specified in that TR. This may be done by inserting a copy of Canadair (Bombardier) TR RJ/155–6 into the AFM. This TR introduces new procedures for operation in icing conditions. After the AFM revision specified in this paragraph has been done, the AFM limitation required by paragraph (g) of this AD must be removed from the AFM.

Note 1: When Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Canadair (Bombardier) TR RJ/155–6.

(o) Unless already done: Before further flight after accomplishing paragraph (n) of this AD, operate the airplane according to the limitations and procedures in Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, except that MMEL entry 30–12–03, which permits the wing anti-ice system to be inoperative with specific provisions, is not affected by this AD.

Records Check

(p) Unless already done, for airplanes having S/Ns 7003 through 7013 inclusive, 7015, 7016, 7018 through 7036 inclusive, 7038 through 7045 inclusive, 7047 through 7058 inclusive, 7060 through 7067 inclusive, 7069 through 7075 inclusive, 7077 through 7104 inclusive, 7106 through 7126 inclusive, 7128 through 7150 inclusive, 7152 through 7156 inclusive, 7158 through 7162 inclusive, 7164 through 7178 inclusive, 7180 through 7202 inclusive, 7204 through 7227 inclusive, 7229 through 7270 inclusive, 7272 through 7346 inclusive, 7348 through 7358 inclusive, 7360, 7361, 7363 through 7377 inclusive, 7379, 7380, 7382 through 7416 inclusive, 8056 through 8076 inclusive, 8082, 8086, 8090 though 8092 inclusive, 8096 and 8097: Within 30 days after December 1, 2008, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections have been replaced since May 1, 2000. Doing the review in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) If no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, no further action is required by this paragraph.

(2) If any anti-ice piccolo duct or complete leading edge section has been replaced since May 1, 2000, or if it cannot be conclusively determined that no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, before further flight, inspect the serial numbers of the replaced ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review.

(i) If none of the piccolo duct serial numbers match any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(ii) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

(q) Unless already done, for airplanes having S/Ns 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378, 7381, 7417 through 7990 inclusive, and 8000 through 8055 inclusive, on which Bombardier Service Bulletin 601R–30–029 has been accomplished: Within 30 days after December 1, 2008, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections have been replaced since accomplishing Bombardier Service Bulletin 601R–30–029. Doing the action in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) If no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, no further action is required by this paragraph.

(2) If any anti-ice piccolo duct or complete leading edge section has been replaced since May 1, 2000, or if it cannot be conclusively determined that no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, before further flight, inspect the serial numbers of the replaced ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review.

(i) If none of the piccolo duct serial numbers match any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(ii) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

(r) Unless already done, for airplanes having S/Ns 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378, 7381, 7417 through 7990 inclusive, and 8000 through 8055 inclusive, on which Bombardier Service Bulletin 601R–30–029 has not been accomplished: Within 30 days after December 1, 2008, inspect the serial numbers of the piccolo ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review. Doing the inspection in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) If none of the piccolo duct serial numbers match any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(2) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

Inspection of the Wing Anti-Ice Piccolo Ducts

(s) Unless already done, for airplanes having a piccolo duct identified in paragraph (p)(2)(ii), (q)(2)(ii), or (r)(2) of this AD: Within 30 days after doing the action specified in paragraph (p), (q), or (r) of this AD, as applicable, do a fluorescent dye penetrant inspection for cracking of the piccolo ducts, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 2,000 flight hours. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(t) Unless already done: If any cracking is found during any inspection required by paragraph (s) of this AD, before further flight, do the actions specified in paragraph (t)(1), (t)(2), or (t)(3) of this AD, except where Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, specifies to contact Bombardier for information regarding repair, this AD requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent). Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) Replace the cracked piccolo duct, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with a new piccolo duct that has the same part number as identified in Part A,

Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, but that does not have a serial number listed in that paragraph.

(2) Replace the cracked piccolo duct, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with a new piccolo duct that has a part number identified in the applicable Bombardier illustrated parts catalog but not identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008.

(3) Replace the cracked piccolo duct with a piccolo duct that has been repaired in accordance with a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent).

Repetitive Inspection of the Wing Anti-Ice Piccolo Ducts

(u) Unless already done, for airplanes on which an inspection required by paragraph (h)(1) of this AD has been done, except for airplanes on which the terminating action specified in paragraph (l) of this AD has been done: Within 2,000 flight hours since the last inspection, or 30 days after December 1, 2008, whichever occurs later, do the actions specified in paragraph (s) of this AD. Doing the inspection required by this paragraph terminates the actions required by paragraph (h)(1) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

Parts Installation Paragraph

(v) Unless already done: As of December 1, 2008, the requirements specified in paragraphs (v)(1) and (v)(2) of this AD must be followed.

(1) For airplanes on which the terminating action specified in paragraph (w) of this AD had not been done as of December 1, 2008: No person may install a piccolo duct having a part number identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, on any airplane, unless the requirements specified in paragraphs (s) and (t) of this AD, as applicable, have been accomplished for that piccolo duct.

(2) For airplanes on which the terminating action specified in paragraph (w) of this AD had been done as of December 1, 2008: No person may install a piccolo duct having a part number identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, on any airplane.

Optional Terminating Action

(w) Replacing all piccolo ducts that have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with piccolo ducts that do not have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, terminates the requirements of paragraphs (f), (h), (i), (p), (q), (r), (s), (t), and (u) of this AD.

Optional Service Information for Certain Requirements of This AD

(x) Actions accomplished according to Bombardier Service Bulletin 601R–30–029, Revision B, dated August 29, 2005; or Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008; are considered acceptable for compliance with the corresponding actions specified in paragraphs (h)(1), (j)(1), (j)(2), (j)(3), and (l) of this AD.

New Requirements of This AD: Actions and Compliance

Terminating Action

(y) Unless already done, do the following actions: Within 24 months after the effective date of this AD, replace all piccolo ducts that have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with piccolo ducts that do not have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008. Replacing all the piccolo ducts in accordance with this paragraph terminates the requirements of paragraphs (f), (h), (i), (p), (q), (r), (s), (t), and (u) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(z) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, New York ACO, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(aa) Refer to MCAI Canadian Airworthiness Directive CF–2008–30, dated October 7, 2008; and the service information identified in Table 1 of this AD; for related information.

TABLE 1—RELATED SERVICE INFORMATION

Service information	Revision level	Date
Bombardier Alert Service Bulletin A601R-30-032, including Appendix A and Appendix B	Original	September 18, 2008.
Bombardier Service Bulletin 601R-30-029, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.	A	July 7, 2005.
Canadair (Bombardier) Temporary Revision RJ/155–6 to the Canadair Regional Jet Airplane Flight Manual, CSP A-012.	Original	September 17, 2008.
Canadair Temporary Revision RJ/155 to the Canadair Regional Jet Airplane Flight Manual, CSP A-012	Original	July 5, 2005.

Issued in Renton, Washington, on July 15, 2009.

Stephen P. Boyd,

Acting Manager,Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–17679 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–030]

Standards for Business Practices for Interstate Natural Gas Pipelines

Issued July 16, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations prescribing standards for interstate natural gas pipeline business practices and electronic communications (found at 18 CFR 284.12) to incorporate by reference standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) for Index-Based Capacity Release and Flexible Delivery and Receipt Points. These standards can be obtained from NAESB at 1301 Fannin, Suite 2350, Houston, TX 77002, 713–356–0060, *http://www.naesb.org,* and are available for viewing in the Commission's Public Reference Room.

The proposed standard for Flexible Delivery and Receipt Points allows natural gas-fired generators easier access to fuel at times when capacity is scarce. The proposed standard for Index-Based Capacity Release provides clarity on the timing and use of price indices for pricing and arranging index-based capacity release transactions.

DATES: Comments are due September 8, 2009.

ADDRESSES: You may submit comments, identified by docket number RM96–1–030, by any of these methods:

• *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Ryan Irwin (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6454;

Kay I. Morice (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6507;

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION: 128 FERC ¶ 61,031.

Standards for Business Practices for Interstate Natural Gas Pipelines; Notice of Proposed Rulemaking

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations at 18 CFR 284.12 to incorporate by reference the consensus standards adopted by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) that (1) permit the use of indices to price capacity release transactions and (2) afford greater flexibility on the receipt and delivery points for redirects of scheduled gas quantities.

I. Background

2. Since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of natural gas interstate pipelines to create a more integrated and efficient pipeline grid. These regulations have been promulgated in the Order No. 587 series of orders,[1] wherein the Commission has incorporated by reference standards for interstate natural gas pipeline business practices and electronic communications that were developed and adopted by NAESB's WGQ. Upon incorporation by reference by the Commission, these standards have become a part of the Commission's regulations and have become mandatory and binding on the natural gas pipelines under the Commission's jurisdiction.

3. A cold snap in January 2004 in New England highlighted the need for better coordination and communication between the gas and electric industries as coincident peaks occurred in both industries making the acquisition of gas and transportation by power plant operators more difficult. In response to this need, in early 2004, NAESB established a Gas-Electric Coordination Task Force to examine issues related to the interrelationship of the gas and electric industries and identify potential areas for improved coordination through standardization. NAESB developed a number of standards to enhance the coordination of scheduling and other business practices between the gas and electric industries. On June 27, 2005, NAESB filed these standards and requested clarification regarding a number of additional proposals that it was considering, including capacity release indexed pricing, the use of flexible receipt and delivery points upstream of a constraint, and changes to the intra-day nomination cycle.

4. In Order No. 698,[2] the Commission incorporated these standards by reference and provided the clarification requested in NAESB's June 27, 2005 filing. The NAESB report highlighted several issues relating to Commission policy that were inhibiting the development of additional standards and requested Commission guidance and clarification on these issues. In the NOPR [3] and in Order No. 698, the Commission provided clarification and guidance to NAESB regarding Commission policies in the following three areas: (1) Uses of gas indices for pricing capacity release transactions; (2) flexibility in the use of receipt and delivery points; and (3) changes to the intraday nomination schedule to increase the number of scheduling opportunities for firm shippers.

5. On September 3, 2008, NAESB submitted a report to the Commission with respect to these three issues. NAESB reports its membership conducted thirteen subcommittee meetings, many of which were multi-day meetings, held in a one year period from June 2007 to July 2008. While the standards discussed related only to gas issues, NAESB states that all interested parties including the Wholesale Electric Quadrant membership were asked to participate and make their perspectives known. Two hundred participants, including many from the electric industry, participated in these meetings.

[1] This series of orders began with the Commission's issuance of *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, FERC Stats. & Regs. ¶ 31,038 (1996).

[2] *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities,* Order No. 698, FERC Stats. & Regs. ¶ 31,251 (2007), *order on clarification and reh'g,* Order No. 698–A, 121 FERC ¶ 61,264 (2007).

[3] *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities,* FERC Stats. & Regs. ¶ 32,609 (2006) (NOPR).

6. NAESB's September 2008 report indicates that the WGQ has adopted business practice standards for (1) increasing the flexibility of gas receipt and delivery points and (2) index-based pricing for capacity releases. In addition, despite holding 12 meetings with respect to modifying the intra-day nomination schedule, NAESB reports that none of the standards proposed achieved a sufficient consensus.

II. Discussion

7. We recognize that the issues considered by NAESB were neither simple nor straightforward, and very much appreciate the hard work, and many hours committed by NAESB, and the 200 volunteers that participated in the process of developing and considering these standards. We propose to incorporate by reference the standards developed by NAESB with respect to index pricing and to flexible receipt and delivery points.[4] These standards will not only assist in providing gas for generation, but will provide enhanced flexibility to all shippers. The index pricing standards provide rules under which releasing and replacement shippers can create rate formulas for capacity release that will better reflect the value of capacity. These standards also reflect a reasonable compromise for dealing with copyright issues that arise in using gas indices to set prices, ensuring that shippers have a reasonable choice of available indices to use while equitably spreading the costs entailed by the use of such indices among the pipelines and shippers. The standard for the use of flexible receipt and delivery points will enable all shippers to quickly and efficiently redirect gas when such gas may be needed by gas generators or other shippers. With respect to the question of intra-day nominations on which consensus was not reached, we do not find a sufficient basis in the NAESB record for us to propose any changes to our current regulations and policies.

A. NAESB's Business Practice Standards for Index-Based Pricing for Capacity Release Transactions and Flexible Point Rights

8. In Order No. 698, the Commission explained that under its regulations, releasing shippers are permitted to use price indices or other formula rates on all pipelines, regardless of whether the pipeline has included a provision allowing the use of indices as part of its discounting provisions.[5] The Commission asked NAESB to examine standards to help ensure that such releases can be processed quickly and efficiently.

9. The standards for index-based pricing provide that shippers wishing to release capacity may use a variety of specified indices and methods to evaluate bids. The standards provide that pipelines must support at least two non-public price index references that are representative of receipt and delivery points on its system,[6] and must support all price indices it references in its gas tariff, or general terms and conditions of service. Releasing shippers are permitted to use alternative indices if the releasing shipper provides licenses to the pipeline for the use of those indices. The standards provide that the releasing shipper is responsible for providing the pipeline, and the replacement shipper, with the method of calculating the reservation rate from the index. The pipeline is required to adhere to the standard capacity release timeline for processing releases if the releasing shipper has provided the pipeline with sufficient instructions to evaluate corresponding bids. However, if the offer includes unfamiliar or unclear terms and conditions, or an index not supported by the pipeline, the pipeline may process the release on a slower time frame.

10. At the time NAESB filed its report with the Commission, it had not completed the technical standards for implementation of these standards. However, these technical standards have been completed,[7] and will be included in version 1.9 of the standards.

11. The Commission regulations require that pipelines permit shippers flexibility to change their receipt and delivery points on both a primary and secondary basis.[8] In its June 27, 2005 report to the Commission, NAESB requested clarification regarding its consideration of a possible standard that would permit shippers to shift gas deliveries from a primary to a secondary delivery point when a pipeline constraint occurs upstream of both points.[9] In Order No. 698, the Commission explained that, under its policies, pipelines must implement within-the-path scheduling under which a shipper seeking to use a secondary delivery point within its scheduling path has priority over another shipper seeking to use the same delivery point but that point is outside of its transportation path, and found that NAESB's proposal regarding scheduling through upstream constraint points appeared consistent with the Commission's regulations and policy.

12. In its September 3, 2008 filing, NAESB included a standard that would require pipelines to permit shippers to redirect scheduled quantities to other receipt points upstream of a constraint point or delivery points downstream of a constraint point without a requirement that the quantities be rescheduled through the point of constraint. This standard will provide shippers, including gas-fired generators, with increased flexibility to obtain capacity or gas from other shippers without adversely affecting other shippers' scheduling rights.

13. The standards for indexed capacity releases and flexible point rights appear to establish reasonable methods of providing enhanced flexibility to shippers and to increase the efficiency of the interstate pipeline grid, and we propose to incorporate these standards by reference.

14. NAESB approved the new and modified standards and related definitions under its consensus procedures.[10] Adoption of consensus standards is appropriate because the consensus process helps to ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the

[4] The WGQ adopted the following changes to its standards: for index-based pricing of capacity release transactions, it modified WGQ Standards 5.3.1, 5.3.3, and 5.3.26, added WGQ Definitions 5.2.4 and 5.2.5, and added WGQ Standards 5.3.61, 5.3.62, 5.3.62a, 5.3.63, 5.3.64, 5.3.65, 5.3.66, 5.3.67, 5.3.68, and 5.3.69; and for flexible points of receipt and delivery, it added WGQ Standard 1.3.80.

[5] An index-based release is a transaction in which the price for capacity is determined by differentials in the value of gas between the upstream and downstream market. As the Commission found in Order No. 637, the implicit value of transportation is the most that any person who can purchase gas in the downstream market would pay if it purchased gas in the upstream market and had to transport it to the downstream market. *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,271 (2000).

[6] We understand NAESB's use of the phrase non-public to refer to commercial indices that charge subscription or license fees.

[7] *See* NAESB WGQ 2007 Annual Plan Item 7a/NAESB WGQ 2008 Annual Plan Item 4a/NAESB WGQ 2009 Annual Plan Item 4.

[8] 18 CFR 284.221(g) & (h).

[9] *See* Order No. 698, FERC Stats. & Regs. ¶ 31,251 at P 7–8.

[10] This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—Distributors, End Users, Pipelines, Producers, and Services (including marketers and computer service providers). For final approval, 67 percent of the WGQ's general membership voting must ratify the standards.

National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities determined by the agency.[11]

B. Intra-Day Nomination Standards

15. The NAESB report raised the possibility of developing standards that would offer an additional intra-day nomination cycle with rights for firm shippers to bump interruptible nominations. In Order No. 698, the Commission stated that NAESB should actively consider whether changes to existing intra-day schedules would benefit all shippers, and provide better coordination between gas and electric scheduling.

16. The Commission's regulations provide that nominations by shippers with firm transportation priority have priority over nominations by shippers with interruptible service.[12] In Order No. 587–G,[13] issued in 1998, the Commission, however, followed the Gas Industry Standards Board [14] consensus and permitted pipelines with three intra-day nomination opportunities to exempt the last intra-day opportunity from bumping. The Commission found that the consensus created a fair balance between firm shippers, who will have had two opportunities to reschedule their gas, and interruptible shippers and will provide some necessary stability in the nomination system, so that shippers can be confident by mid-afternoon that they will receive their scheduled flows.

17. The NAESB standards currently provide shippers four nomination opportunities: The Timely Nomination Period (11:30 a.m. CCT [15] the day prior to gas flow), the Evening Nomination Cycle (6 p.m. CCT the day before gas flow); Intra-Day 1 (10 a.m. CCT the day of gas flow); and Intra-Day 2 (5 p.m. CCT the day of gas flow). A firm nomination for the first three nomination cycles has priority over (can bump) an already scheduled interruptible (IT) nomination. But at the Intra-Day 2 cycle, a firm nomination will not bump already scheduled interruptible service.

Cycle	Nomination time (CCT)	Nomination effective	Bumping IT	Bumping notice	Schedule confirmed
Timely	11:30 am	Day-Ahead	Yes	4:30 pm	4:30 pm.
Evening	6 pm	Day-Ahead	Yes	10 pm	10 pm.
Intra-Day 1	10 am	Day of	Yes	2 pm	2 pm.
Intra-Day 2	5 pm	Day of	No	NA	9 pm.

18. The NAESB committee held 12 meetings and considered a wide variety of possible revisions to the nomination schedule adopted in 1998. These included complete revisions of the timeline, including changing the gas day; adding intra-day nomination opportunities within the existing framework; changing the Intra-Day 2 to a bump nomination while adding an additional no-bump nomination period, and merely changing the Intra-Day 2 cycle to a bumpable nomination. None of these proposals achieved a sufficient consensus at the subcommittee level.

19. Comments to the Executive Committee were mixed on whether any of these options were practicable, cost effective, or feasible. Some commenters contended that changing the gas nomination schedule would accomplish little for gas electric coordination without a coordinated development of a standardized electric schedule.[16] They also argued that no compelling need existed to change the gas schedule and that such a change could cause problems, because: Problems persist with pipeline confirmations under the current gas nomination timeline and increasing the number of nomination cycles or shortening confirmation windows is likely to exacerbate those problems; modifying the intraday nomination timeline to increase and/or add to the number of bumpable cycles will further reduce the time to react to a cut in interruptible service; increasing the number of bumpable nomination cycles or delaying scheduling will decrease the number of available counter-parties in the event of a cut in scheduled volumes; adding more and later nomination cycles will cause staffing issues for LDCs, pipelines and gas marketers resulting in increased costs with no assurance of commensurate benefits.[17] A number of commenters also highlighted the need, in their view, to retain the no-bump rule for interruptible transportation as being important for electric generators as well as the market in general.[18]

20. Others, however, argued that changes in the operation of the gas markets since 1998 warrant ensuring that firm shippers receive the full value of their firm contracts. These changes include the imposition of strict pro rata hourly take obligations along with significant imbalance charges and penalties; the development of the organized wholesale electric bid market that has increased the need to synchronize the scheduling of natural gas-fired generation units with dispatch notification timelines; the introduction of more third-party storage and service providers that require synchronization of scheduling opportunities in times of peak usage; the introduction of hourly gas contracting without hourly gas scheduling; and technological developments that permit automated and expedited scheduling.[19]

21. We agree with BG Energy Merchants that ''all in all it was a difficult task that FERC gave to NAESB,'' [20] and we appreciate the amount of work and time committed to the consideration of these issues. Ultimately, however, we agree with the Interested LDCs that ''a simple, one-size fits-all solution does not exist that will

[11] Public Law 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[12] 18 CFR 284.12(b)(1)(i).

[13] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587–G, FERC Stats. & Regs. ¶ 31,062, at 30,672 (1998).

[14] At that time, NAESB was the Gas Industry Standards Board and had not yet expanded to include the electric industry or the retail gas and electric segments.

[15] Central clock time.

[16] As an example of these comments, *see* NAESB September 3, 2008 filing at 26 (Comments of New Jersey Natural Gas Co., New Jersey Natural Gas Company, *http://naesb.org/pdf3/wgq_060308njng.doc.*), Comments of Interested LDCs, *http://naesb.org/pdf3/wgq_060308ldc.pdf*).

[17] *Id.*

[18] As an example, *see* NAESB September 3, 2008 filing at 26 (Comments of New England Power Generators Association, *http://naesb.org/pdf3/wgq_060308nepga.pdf,* Independent Power Producers, *http://naesb.org/pdf3/wgq_060308ippny.pdf.*).

[19] As an example, *see* NAESB September 3, 2008 filing at 26 (Joint Comments of Multiple Entities, *http://naesb.org/pdf3/wgq_060308aps.pdf* for a detailed presentation of these arguments).

[20] *See* NAESB September 3, 2008 filing at 26 (Comments of BG Energy Merchants, *http://naesb.org/pdf3/wgq_060308bgem_dmt.doc*).

solve the complex issue of coordinating between the electric and gas industries, [because] the diversity within the electric industry (e.g., differing timelines, system peaks times, generation mixes, and prevalence of firm gas service), in particular, does not suggest that revising gas scheduling procedures is the most effective means to improve coordination.'' [21] Based on the extensive NAESB record that we reviewed, we are not convinced that we have a sufficient basis for finding that any of the proposed revisions create a superior balance of interests compared with the original consensus.[22] We therefore are not proposing any changes to our regulations with regard to intra-day nominations.

22. The changes we implemented in Order No. 712,[23] the removal of the price ceiling for short term releases and the use of asset manager agreements, together with the standards that NAESB has approved for index pricing for capacity release and greater flexibility in using receipt and delivery points should assist electric generators as well as other shippers in obtaining firm transportation capacity quickly and effecting changes in the way their gas is used. Rather than making a nationwide change in scheduling affecting all pipelines, this is an area best addressed by individual pipelines adding additional nomination opportunities or services to better accommodate specific conditions of their systems and the needs of gas-fired generation within their regions.

III. Notice of Use of Voluntary Consensus Standards

23. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the WGQ.

IV. Information Collection Statement

24. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs to implement the WGQ's definitions and business practice standards for interstate natural gas pipelines and electronic communication protocols. The burden estimates are primarily related to start-up to implement these standards and regulations and will not result in ongoing costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–549C	126	1	12	1,512
Totals				1,512

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 1,512.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following: [24]

	FERC–549C
Annualized Capital/Startup Costs	$226,800
Annualized Costs (Operations & Maintenance)	N/A
Total Annualized Costs	226,800

25. OMB regulations [25] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices of Interstate Natural Gas Pipelines (FERC–549C).

Action: Proposed collections.

OMB Control No.: 1902–0174.

Respondents: Business or other for profit (Natural Gas Pipelines (Not applicable to small business.)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

32. *Necessity of Information:* This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to provide for greater accessibility to fuel in times of scarcity and rules to allow for alternative indices to establish rates for capacity release to better reflect the value of that capacity. The implementation of these standards will permit greater flexibility by providing a reasonable choice of available indices to use while simultaneously providing a greater equalization of costs for their use. Incorporation of the standard for use of flexible receipt and delivery points allows for the efficient redirection of gas when it may be needed by gas-fired generators or other shippers thereby improving the reliability in both the electric and gas industries.

33. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act of promoting the efficiency and reliability of the gas industries' operations. The Commission's Office of Energy Market and Regulation will use the data for general industry oversight.

34. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices of natural gas pipelines and made a

[21] NAESB September 3, 2008 filing at 26 (Comments of Interested LDCs, *http://naesb.org/pdf3/wgq_060308ldc.pdf*).

[22] For example, we do not know the costs to the pipelines and practical implications to shippers or others of creating more numerous intra-day nomination opportunities or adding a late nomination period well after normal business hours.

[23] *Promotion of a More Efficient Capacity Release Market,* Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g,* Order No. 712–A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

[24] The total annualized cost for the two information collections is $226,800. This number is reached by multiplying the total hours to prepare a response (hours) by an hourly wage estimate of $150 (a composite estimate that includes legal, technical and support staff rates). $226,800 = $150 × 1,512.

[25] 5 CFR 1320.11.

preliminary determination that the proposed revisions are necessary to establish more efficient coordination between the gas and electric industries. Requiring such information ensures both a common means of communication and common business practices to limit miscommunication for participants engaged in the sale of electric energy at wholesale and the transportation of natural gas. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industries. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

35. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426 Tel: (202) 502–8415/Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov.*

36. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285].

V. Environmental Analysis

37. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[26] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[27] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[28] Therefore, an environmental assessment is unnecessary and has not been prepared as part of this NOPR.

VI. Regulatory Flexibility Act Certification

38. The Regulatory Flexibility Act of 1980 (RFA)[29] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment.[30] Based on our analysis of the requirements proposed in this NOPR, we do not think the proposed rule will have a significant impact on a substantial number of small entities.

VII. Comment Procedures

39. The Commission invites interested persons to submit written comments on the NAESB business practice standards proposed for incorporation by reference in this NOPR, as well as any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 8, 2009. Comments must refer to Docket No. RM96–1–030, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

40. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. For paper filings, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

41. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely, as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

42. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

43. From FERC's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number, excluding the last three digits of this document in the docket number field.

44. User assistance is available for eLibrary and the FERC's Web site during the Commission's normal business hours. For assistance, contact FERC Online Support by e-mail at *FERCOnlineSupport@ferc.gov,* or by telephone at 202–502–6652 (toll-free at (866) 208–3676) or for TTY, contact (202) 502–8659.

List of Subjects in 18 CFR Part 284

Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended by revising paragraphs (a)(1)(i) through (a)(1)(vii) to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) Additional Standards (General Standards, Creditworthiness Standards,

[26] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* FERC Stats. & Regs. ¶ 30,783 (1987).

[27] 18 CFR 380.4.

[28] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[29] 5 U.S.C. 601–612.

[30] 5 U.S.C. 601–604.

and Gas/Electric Operational Communications Standards) (Version 1.8, September 30, 2006);

(ii) Nominations Related Standards (Version 1.8, September 30, 2006) and including the standards contained in NAESB WGQ 2007 Annual Plan Item 7b/NAESB WGQ 2008 Annual Plan Item 4b (August 25, 2008);

(iii) Flowing Gas Related Standards (Version 1.8, September 30, 2006);

(iv) Invoicing Related Standards (Version 1.8, September 30, 2006);

(v) Quadrant Electronic Delivery Mechanism Related Standards (Version 1.8, September 30, 2006) with the exception of Standard 4.3.4;

(vi) Capacity Release Related Standards (Sep. 3, 2008) and including the standards contained in NAESB WGQ 2007 Annual Plan Item 7a/NAESB WGQ 2008 Annual Plan Item 4a (August 25, 2008) and the Standards included in NAESB WGQ 2007 Annual Plan Item 7a/NAESB WGQ 2008 Annual Plan Item 4a/NAESB WGQ 2009 Annual Plan Item 4; and

(vii) Internet Electronic Transport Related Standards (Version 1.8, September 30, 2006) with the exception of Standard 10.3.2.

* * * * *

[FR Doc. E9–17333 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2008–HA–0025; 0720–AB20]

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2007; Improvements to Descriptions of Cancer Screening for Women

AGENCY: TRICARE Management Activity, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department is publishing this proposed rule to implement section 703 of the National Defense Authorization Act (NDAA) for Fiscal Year 2007 (FY07), Public Law 109–364. Specifically, that legislation authorizes breast cancer screening and cervical cancer screening for female beneficiaries of the Military Health System, instead of constraining such testing to mammograms and Papanicolaou smears. The rule allows coverage for ''breast cancer screening'' and ''cervical cancer screening'' for female beneficiaries of the Military Health System, instead of constraining such testing to mammograms and Papanicolaou tests. This rule ensures new breast and cervical cancer screening procedures can be added to the TRICARE benefit as such procedures are proven to be a safe, effective, and nationally accepted medical practice. This amends the cancer specific recommendations for breast and cervical cancer screenings to be brought in line with the processes for updating other cancer screening recommendations.

DATES: Written comments will be accepted at the address indicated below until September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or RIN, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov*, as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Colonel John Kugler, Office of the Chief Medical Officer, TRICARE Management Activity, telephone (703) 681–0064.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Defense updated coverage for screening with the use of the breast MRI for women in a designated high risk category as advised by the American Cancer Society. In the process of providing this additional coverage, it was discovered that because of statutory wording, there was a group of high risk women that are standard beneficiaries under the age of 35 for whom this coverage could not be provided without an amendment in the Code of Federal Regulations (CFR). Amending the CFR will provide coverage for breast MRI screening for all Department of Defense beneficiaries in the high risk category recommended by the American Cancer Society.

II. Regulatory Procedures

Executive Order (EO) 12866 and Regulatory Flexibility Act

E.O. 12866 requires a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this proposed rule is not subject to any of these requirements. This rule, although not economically significant, is a significant rule under E.O. 12866 and has been reviewed by the Office of Management and Budget. Amending the CFR will provide coverage for breast MRI screening for all Department of Defense beneficiaries in the high risk category, if necessary. It is critically important that we eliminate any potential gaps in coverage for high risk individuals as quickly as possible.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Unfunded Mandates Reform Act

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private section, of $100 million or more in any one year.

Executive Order (EO) 13132

We have examined the impact(s) of the proposed rule under E.O. 13132 and it does not have policies that have Federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, dental health, health care, health insurance, individuals with disabilities, Military personnel.

Accordingly, 32 CFR, Part 199 is proposed to be amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C., chapter 55.

2. In § 199.4:

A. Revise paragraphs (g)(37)(viii) and (ix).

B. Redesignate paragraphs (g)(27)(x) through (g)(37)(xii) as (g)(37)(xi) through (g)(37)(xiii).

C. Add a new paragraph (g)(37)(x).

The revisions and additions read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(37) * * *

(viii) Cancer screenings authorized by 10 U.S.C. 1079.

(ix) Health promotion and disease preventions visits (which may include all of the services provided pursuant to § 199.18(b)(2)) may include all of the services provided pursuant to § 199.18(b)(2)) may be provided in connection with immunizations and cancer screening examinations authorized by paragraphs (g)(37)(ii) or (g)(37)(viii) of this section.

(x) Physical examinations for beneficiaries ages 5–11 that are required in connection with school enrollment.

* * * * *

Dated: July 17, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17651 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2008–HA–0060]

RIN 0720–AB26

TRICARE; Rare Diseases Definition

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the definition of rare diseases to adopt the definition of a rare disease as promulgated by the National Institutes of Health, Office of Rare Diseases. The rule modification will result in the definition used by the TRICARE program for a rare disease to be consistent with the definition used by the National Institutes of Health and the Food and Drug Administration. TRICARE has generally been applying the broader National Institutes of Health and Food and Drug Administration definitions when making coverage decisions for treatments; therefore, there will be no practical changes for beneficiaries.

DATES: Written comments received at the address indicated below by September 22, 2009 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by either of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: LCDR James Ellzy, TRICARE Management Activity, Office of the Chief Medical Officer, telephone (703) 681–0064.

SUPPLEMENTARY INFORMATION: On January 6, 1997, the Office of the Secretary of Defense published a final rule in the **Federal Register** (62 FR 627–631) clarifying the TRICARE exclusion of unproven drugs, devices and medical treatments and procedures and adding a definition of rare diseases to be used in the TRICARE Program. TRICARE defined a rare disease as one which affects fewer than one in 200,000 Americans. Upon further review, TRICARE proposes to revise the definition to be in compliance with the definition of other federal agencies. The Office of Rare Diseases was initially established as part of the National Institutes of Health in 1993 to promote research and collaboration on rare and orphan diseases. The Rare Diseases Act of 2002 (Pub. L. 107–280) codified the establishment of the Office of Rare Diseases by adding a section 404F to the Public Health Service Act (42 U.S.C. 283h). This statute defines a rare disease as ''any disease or condition that affects less than 200,000 persons in the United States.'' Additionally, Section 526(a)(2) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360bb(a)(2)), provides, in part, that the term ''rare disease or condition'' means any disease or condition which affects less than 200,000 persons in the United States. The proposed rule modification will result in the definition used by the TRICARE program for a rare disease to be consistent with the definition used by the National Institutes of Health and the Food and Drug Administration.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

Section 801 of title 5, United States Code (U.S.C.), and Executive Order (E.O.) 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, or a significant regulatory action under the provisions of E.O. 12866.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that his rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule will not significantly affect a substantial number of small entities for purposes of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Executive Order 13132, ''Federalism''

This proposed rule has been examined for its impact under E.O. 13132 and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by revising the definition of Rare Diseases as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Rare Diseases. TRICARE/CHAMPUS defines a rare disease as any disease or condition that has a prevalence of less than 200,000 persons in the United States.

* * * * *

Dated: July 17, 2009.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17650 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD73

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The National Park Service (NPS) announces the reopening of the comment period on the proposed rules to manage winter visitation and recreational use in Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway. The proposed rule was published in the **Federal Register** on November 5, 2008.

DATES: The comment period for the proposed rule published on November 5, 2008 (73 FR 65784), is reopened. Comments must be received by September 8, 2009.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD73 (RIN), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190

All submissions received must include the agency name and RIN. For additional information see ''Public Comments'' under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Management Assistant's Office, Headquarters Building, Yellowstone National Park, 307–344–2019 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The proposed rule was originally published with a 15-day comment period. The NPS has now determined that there is sufficient time to provide for an additional 45-day comment period to ensure that the public has had an opportunity for review and comment.

The NPS intends for final rules to be published on or before November 15, 2009, and to be in effect for the winter season commencing on December 15, 2009. Under the proposed rule, up to 318 snowmobiles would be allowed in Yellowstone each day.

The proposed regulatory provisions regarding the duration of this rule remain as published last year. The NPS intends that this rule would be in effect in Yellowstone National Park for the winter seasons ending with the 2010–2011 winter season. During the period this rule is in effect, the NPS will work with all interested parties to complete a new environmental impact statement using the best information available, a new long-term plan, and permanent regulations governing winter use in Yellowstone National Park. The proposed rules for Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway, if adopted, will be permanent for these two units.

If you have already commented on the rule, you do not have to resend your comment. We will consider it in preparing the final rule. We will also consider any comments that may have been received between the close of the comment period on November 20, 2008 and the re-opening of this comment period.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 21, 2009.

Will Shafroth,

Principal Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks.

[FR Doc. E9–17778 Filed 7–23–09; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 17, and 21

RIN 2900–AN27

Herbicide Exposure and Veterans With Covered Service in Korea

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication, medical, and vocational rehabilitation and employment regulations to incorporate relevant provisions from the Veterans Benefits Act of 2003. Specifically, this document proposes to amend VA's regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in their children. It also proposes to amend VA's medical regulations by correcting the Health Administration Center's hand-delivery address.

DATES: Comments must be received by VA on or before *September 22, 2009.*

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Office of General Counsel (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN27—Herbicide Exposure and Veterans with Covered Service in Korea.'' Copies of comments received will be available for public inspection in the Office of General Counsel, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the provisions regarding monetary allowance, contact Thomas Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725; for information on the provisions regarding health care benefits, contact Richard M. Trabert, Policy Management Division, VA Health Administration Center, P.O. Box 469065, Denver, CO 80246–9065, (303) 331–7549; for information regarding provisions on vocational rehabilitation and employment, contact Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9613. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Veterans Benefits Act of 2003, Public Law 108–183, amended sections of Title 38 of the United States Code, which address veterans' benefits law. To ensure compliance with statutory changes, VA proposes to amend its regulations pertaining to benefits based on herbicide exposure to include veterans who served in or near the Korean demilitarized zone (DMZ) during certain periods and children of such veterans born with spina bifida.

I. Herbicide Exposure

Section 102 of the Veterans Benefits Act of 2003 amended 38 U.S.C. chapter 18 to provide benefits (health care, monetary allowance, vocational training, and education) for spina bifida in children of certain veterans who served in Korea. The statutory provisions, codified at 38 U.S.C. 1821, apply to the children of veterans who are determined by VA, in consultation with the Secretary of Defense, to have been exposed to an herbicide agent during that service. Section 1821 describes parameters governing the time and location of a veteran's service that may result in a child's eligibility for benefits. Section 1821 further provides that VA will consult with the Secretary of Defense to determine whether herbicide exposure occurred within those prescribed time periods and geographic parameters. The statutory provisions apply to all forms and manifestations of spina bifida, except spina bifida occulta.

The statutory change at 38 U.S.C. 1821 authorizes recognition of herbicide exposure for ''certain Korea service veterans'' for purposes of providing benefits to a child born to them with spina bifida. Under the statute, those veterans must have served ''in or near'' the Korean DMZ as determined by VA in consultation with the Department of Defense (DoD) between September 1, 1967, and August 31, 1971, and must be found by VA, in consultation with DoD, to have been exposed to an herbicide agent during such service. Even if a veteran served in or near the DMZ within the specified time period, the statute requires VA to determine whether the veteran was exposed to herbicides during such service. Accordingly, the statute does not establish or require VA to establish a presumption of herbicide exposure based on service in or near the Korean DMZ. However, we believe that the statute, along with VA's general authority under 38 U.S.C. 501 to establish all necessary and appropriate regulations, provides VA with authority to establish presumptions of exposure where a reasonable basis exists for such presumptions. As explained below, VA proposes to presume herbicide exposure for certain veterans who served within the time periods and geographic locations described by the statute.

To implement the requirements of the statute, VA consulted with DoD regarding the times and locations of herbicide use in or near the Korean DMZ. The Korean demilitarized zone (DMZ) is a strip of land running across the Korean Peninsula that separates North Korea from South Korea and serves as a buffer zone between the two countries. The DMZ cuts the Korean Peninsula roughly in half following the geographic 38th parallel north latitude and is approximately 155 miles long and 2.5 miles wide. It became a de facto border following World War II as the demarcation line between the northern Soviet-controlled Democratic People's Republic of Korea and the southern United Nations-controlled Republic of Korea. When an attacking North Korean military force crossed the DMZ on June 25, 1950, United States and United Nations troops came to the aid of South Korea and the Korean War commenced. A ceasefire agreement was signed on July 27, 1953, which established the current DMZ buffer zone between North and South Korea. No peace treaty was ever signed and the two Koreas remain technically at war. The United States established a permanent contingent of troops on the DMZ to support South Korea. As military involvement in Vietnam escalated during the late 1960s, tensions along the DMZ increased and additional United States troops were sent to South Korea. Sporadic combat between the opposing forces occurred, primarily within the DMZ buffer zone. Following the Vietnam era, tensions decreased between the two Koreas, but the DMZ remains the most heavily armed border area in the world.

DoD has advised that herbicides were not applied within the DMZ, but were applied in some adjacent areas. Specifically, DoD has reported that herbicides were applied between April 1968 and July 1969 along a strip of land 151 miles long and up to 350 yards wide along the southern edge of the DMZ north of the civilian control line. The herbicide agents were applied through hand spraying and hand distribution of pelletized herbicides. There was no aerial spraying. DoD also has provided VA a list of the military units that are currently known to have operated in that area during the period that herbicides were applied.

Based on this information, we propose to presume herbicide exposure for any veteran who served between April 1968 and July 1969 in a unit determined by VA and DoD to have operated in an area in or near the Korean DMZ in which herbicides were applied.

There is no record that herbicide agents were sprayed in the DMZ itself. Nevertheless, we propose to include the word ''in'' before ''or near'' in these regulations, for two reasons. First, we want to ensure that our regulations are consistent with § 1821, as amended. Second, if evidence arises in the future indicating that herbicide agents were applied in the DMZ, this rule would allow VA to provide benefits without having to amend its regulations.

The criterion we propose to use for purposes of the presumption of exposure is that the veteran was assigned to a particular listed military unit within the prescribed time frame. Recognition of being exposed to herbicides ''in or near'' the DMZ, for an individual veteran, is based on service in one of the particular units acknowledged by DoD and VA as having performed missions near the DMZ during the period herbicides were used (April 1968 through July 1969). These units were assigned or rotated to areas near the DMZ during that time period. These included Infantry, Armor, and Artillery units. Because DoD and VA may recognize additional units in the future based on additional information or evidence, we will not list the units in the regulation. VA has provided a list of currently recognized units to VA adjudicators in VA's procedural manual as an administrative reference. Additionally, if a veteran asserts that he or she was in or near the DMZ during

the specified time period and VA has not already determined the veteran's unit to be one that was in or near the DMZ sometime between April 1, 1968, and July 31, 1969, VA will develop further evidence to verify that assertion.

The specific units that DoD identified that served in areas along the DMZ in Korea where herbicides were used between April 1968 and July 1969 are: Combat Brigades of the 2nd and 7th Infantry Divisions: 1st Battalion, 9th Infantry; 2nd Battalion, 9th Infantry; 1st Battalion, 17th Infantry; 2nd Battalion, 17th Infantry; 1st Battalion, 23rd Infantry; 2nd Battalion, 23rd Infantry; 3rd Battalion, 23rd Infantry; 1st Battalion, 31st Infantry; 2nd Battalion, 31st Infantry; 1st Battalion, 32nd Infantry; 2nd Battalion, 32nd Infantry; 3rd Battalion, 32nd Infantry; 1st Battalion, 38th Infantry; 2nd Battalion, 38th Infantry; 4th Battalion, 7th Cavalry; 2nd Battalion, 10th Cavalry; 1st Battalion, 72nd Armor; 2nd Battalion, 72nd Armor; 1st Battalion, 12th Artillery; 1st Battalion, 15th Artillery; 7th Battalion, 17th Artillery; 6th Battalion, 37th Artillery; 5th Battalion, 38th Artillery.

Service records may show that the above units were assigned to either the 2nd or 7th Infantry Division.

Additional units: 13th Engineer Battalion; United Nations Command Security Battalion-Joint Security Area (UNCSB–JSA); Crew of the USS Pueblo.

If a veteran served in or near the Korean DMZ during the period between September 1, 1967, and August 31, 1971, but not within the time periods and geographic locations that would qualify for a presumption of exposure under this proposed rule, such service would qualify for benefits under 38 U.S.C. 1821 only if VA determines that the veteran was actually exposed to herbicides during such service. Based on the information provided by DoD to date, it appears unlikely that exposure would have occurred outside the dates and locations that would be covered by the presumption of exposure under this proposed rule. Nonetheless, the proposed rule would incorporate the statutory provisions in section 1821 in order to make clear that the presumption of exposure does not foreclose claims based on other service that is within the dates and locations covered by the statute.

Currently, 38 CFR 3.814 specifies the criteria for eligibility for a monetary allowance to children of Vietnam veterans who are suffering from spina bifida. Regulations in parts 17 and 21 of title 38, Code of Federal Regulations, authorize health care and vocational rehabilitation and training to individuals who meet the eligibility requirements of § 3.814. We propose to revise § 3.814 to provide criteria for eligibility for children of veterans with covered service in Korea who are suffering from spina bifida. As explained above, we propose to define ''covered service in Korea'' consistent with the statutory criteria set forth in 38 U.S.C. 1821(c), requiring that the veterans have served in or near the Korean DMZ between September 1, 1967, and August 21, 1971, and have been determined by VA, in consultation with DoD, to have been exposed to an herbicide agent during such service. To implement the proposed presumption of exposure discussed above, we propose to state that exposure to an herbicide agent will be conceded if the veteran served between April 1, 1968, and July 31, 1969, in a unit determined by VA and DoD to have operated in the area where herbicides are known to have been applied during that period.

Section 3.307 is VA's regulation regarding presumptive service connection for purposes of disability compensation to veterans and dependency and indemnity compensation to their survivors. We propose to add at new § 3.307(a)(6)(iv) a presumption of herbicide exposure based on service in or near the Korean DMZ identical to the presumption proposed for purposes of benefits to a veteran's child under 38 U.S.C. 1821. Because VA is providing statutorily authorized benefits to children with spina bifida of such veterans, we believe it is logical and fair to provide benefits to these veterans themselves based on their exposure to herbicide agents. We, therefore, propose that these veterans be eligible for the presumption of exposure to herbicide agents.

There is currently no specific statutory authority for providing a presumption of exposure to herbicide agents to veterans who served in Korea. However, such a presumption would comport with known facts and congressional intent and is within VA's general rulemaking authority under 38 U.S.C. 501. It would be illogical to conclude that the children with spina bifida of the covered veterans have the disability due to the veteran's exposure to herbicide agents, but not to presume that the veteran himself was exposed to herbicide agents and merits VA benefits for any disabilities associated with that exposure. We have determined that the proposed presumption will be beneficial to veterans and will promote fairness, consistency, and efficiency in VA decision making.

II. Monetary Allowance

Spina Bifida Benefits

The statutory provisions regarding spina bifida at section 1821 state that the child should be provided a monetary allowance ''as if such child of a veteran with covered service in Korea were a child of a Vietnam veteran who is suffering from spina bifida under [subchapter I of chapter 18].'' Section 1805 of title 38, United States Code, authorizes a monthly monetary allowance to the child of a Vietnam veteran suffering from spina bifida. The current regulation regarding payment for an individual suffering from spina bifida under 38 U.S.C. chapter 18, subchapter I, is 38 CFR 3.814, Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran. We propose to amend the title of § 3.814 to include the children of veterans of covered service in Korea and amend § 3.814(a) to include those individuals suffering from spina bifida whose biological father or mother had covered service in Korea. We propose to redesignate the definitions in § 3.814(c) to add a description of ''Covered service in Korea'' in § 3.814(c)(2). Section 3.814(c)(1) is the definition of ''Vietnam veteran;'' therefore, it is logical to include covered service in Korea as the next definition, (c)(2). We propose to redesignate current § 3.814(c)(2), ''Individual,'' and (c)(3), ''Spina bifida,'' as § 3.814(c)(3) and (c)(4) respectively. Current § 3.814(c)(2), ''Individual,'' which we have proposed to redesignate as § 3.814(c)(3), refers to Vietnam veterans only. We propose to amend redesignated § 3.814(c)(3) by expanding the language to include veterans with covered service in Korea.

Conforming Amendments

We also propose to amend several regulations that contain references to benefits under 38 U.S.C. chapter 18 for children with spina bifida of Vietnam veterans. We propose to amend these regulations to include the children of veterans with covered service in Korea, so that they are eligible for the same benefits as children of Vietnam veterans. In the regulations related to benefits for spina bifida, we will continue to use the language ''certain individuals who are children of * * *'' as the statutes in chapter 18 refer to benefits for ''individuals'' and provide the definition that child refers to an individual regardless of age or marital status. We, additionally, have a similar definition in 38 CFR 3.814 and 3.815.

The regulations we are amending to conform with the amendments to 38 U.S.C. chapter 18 include: 38 CFR 3.27 (which addresses the automatic adjustment of VA benefit rates); § 3.29(c) (which addresses rounding of VA benefit rates); § 3.31 (which addresses commencement of a period of payment); § 3.105(g) (which covers revision of decisions); § 3.114(a) (which addresses the effective date of certain awards based on a change of law or VA issue); § 3.261(a)(40) (which covers character of income and whether the income is included or excluded for VA dependency and pension purposes); § 3.262(y) (which covers evaluation of income for VA dependency and pension purposes); § 3.263(g) (which addresses what is considered in determining the corpus of an estate for VA dependency purposes and the net worth of a veteran, surviving spouse, or child for VA pension purposes); § 3.272(u) (which addresses exclusions for countable income for the purposes of determining entitlement to VA improved pension); and § 3.275(i) (which addresses the criteria for evaluating net worth for the purposes of determining the corpus of estate or net worth of a veteran, surviving spouse, or child for VA pension purposes).

Title 38 CFR 3.403 addresses the effective date of awards of benefits for children, including monetary allowances under 38 U.S.C. chapter 18. Section 3.403(b) covers monetary allowances under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran as specified in that statute and includes the effective date of when these benefits were first available, October 1, 1997. Section 3.403(c) covers monetary allowances under 38 U.S.C. 1815 for an individual suffering from a covered birth defect who is a child of a woman Vietnam veteran as specified in that statute and includes the effective date when these benefits were first available, December 1, 2001. Therefore, we propose to add new § 3.403(d), for children covered under new section 1821. We will use the same general effective date language as in § 3.403(b) and (c), which follow VA's statute addressing effective dates for benefits, 38 U.S.C. 5110, and we will add that the award of benefits can be no earlier than the effective date of the statute, December 16, 2003.

As discussed below, certain sections of section 5110 apply to chapter 18 benefits, under 38 U.S.C. 1832(b). In relevant part, these are as follows: section 5110(a) (describing the general effective date rule, which is that an award is effective in accordance with facts found, but not earlier than the date of receipt of application); section 5110(b)(2) (noting that the effective date of an award for increased compensation is the earliest date the increased disability occurred, if the application is received within 1 year from such date); and section 5110(i) (noting that the effective date for reopened claims allowed on the basis of correction of military records will be the date the application was filed for correction or the date the disallowed claim was filed, whichever is later, but the retroactive benefits will be no more than 1 year prior to the date of the reopened claim).

Not specifically applicable to chapter 18 benefits, but included in § 3.403(b) and (c), is section 5110(n), which states that the effective date of the award of any benefits based on marriage, birth, or adoption of a child, shall be the date of the event if proof of such event is received by the Secretary within 1 year of the date of the marriage, birth, or adoption. Since chapter 18 benefits are for children, we presume it is the intent of the statutes that section 5110(n) applies for chapter 18 awards. Therefore, we propose to include this relevant effective date provision in new § 3.403(d) for awards for children with spina bifida of veterans with covered service in Korea, based on the wording of § 3.403(c).

Unrelated to the provisions of the Veterans Benefits Act of 2003, Public Law 108–183, we noted while preparing this rulemaking that certain effective date provisions in § 3.403(c) are not included in § 3.403(b), and we propose to correct these omissions here. Therefore, we propose to amend § 3.403(b) to add the relevant provisions and to provide a reference to § 3.814(e). We also propose in new § 3.403(d) to use language about effective dates that VA uses in its effective date regulations, to be consistent with those regulations. This regulatory language is plainer than the statutory language; for example, we propose to use the term ''date entitlement arose'' instead of the statutory language ''in accordance with the facts found.'' Additionally, we noted that § 3.814(e) does not include the information regarding the effective date of birth, if the claim is received within 1 year of that date. Therefore, we propose to add it to be consistent with the other effective date provision for children with birth defects (§ 3.815(i)).

Section 3.503(b) addresses the effective date of reduction and discontinuance of monetary allowance under 38 U.S.C. chapter 18 for certain individuals. We propose to amend it to add the children with spina bifida of veterans with covered service in Korea.

Authority Citations

We, additionally, propose to use this rulemaking to revise several authority citations in 38 CFR part 3 to chapter 18 sections that have been repealed and redesignated. Public Law 106–149, the Veterans Benefits and Health Care Improvement Act of 2000, November 1, 2000, repealed 38 U.S.C. 1806. Section 1806 addressed effective dates for chapter 18. This section was recodified by the Public Law at section 1822. Section 1822 provided that 38 U.S.C. 5110, regarding effective dates, applies to chapter 18 benefits.

Subsequently, Public Law 108–183, which we are implementing in this rulemaking, added new section 1821, and redesignated prior sections 1821, 1822, 1823, and 1824, as new sections 1831, 1832, 1833, and 1834, respectively.

Therefore, we propose to remove the references to old section 1821 and replace them with a reference to section 1831; remove the references to section 1822 and replace them with a reference to section 1832; remove the references to section 1823 and replace them with a reference to section 1833; and remove the references to section 1824 and replace them with a reference to 1834 in the authority citations in §§ 3.31, 3.105, 3.114, 3.216, 3.261, 3.262, 3.263, 3.403, 3.503, 3.814, and 3.815 as applicable.

In addition, we propose to add references to new section 1821 in the authority citations in §§ 3.27, 3.29, 3.31, 3.105, 3.114, 3.307, 3.403, and 3.814 as applicable.

There is additionally an extraneous authority citation at the end of 38 CFR 3.403, which reads, ''(Authority: 38 U.S.C. 1806, 5110(n); sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)''. For the following reasons, we now propose to remove that citation. The citation to 38 U.S.C. 1806 is inappropriate because that section has been repealed. The citation to 38 U.S.C. 5110(n) is unnecessary because it is already cited as authority to paragraph (a)(3). The citation to Public Law 104–204 is unnecessary because it has already been codified in 38 U.S.C. 1832 and 5110, both of which we propose to add in the authority citations for § 3.403(b), (c), and proposed (d). For the same reason, we propose to remove the citation to Public Law 104–204 from the authority citation to paragraph (b).

III. Health Care Benefits

In addition to amending VA regulations concerning the monetary allowance, this document also proposes to amend VA regulations in 38 CFR part 17 concerning health care benefits for

children with spina bifida. By the terms of 38 U.S.C. 101(2), 1802–1803, 1811–1813, and 1821, VA will provide the child of a Vietnam veteran or veteran with covered service in Korea, who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is necessary.

In 38 CFR 17.900, Definitions, we propose to add a reference to the children of veterans with covered service in Korea. Further, we propose to amend § 17.901 and the Note following this section to conform to the requirements of section 408 of Public Law 110–387, the ''Veterans' Mental Health and Other Care Improvements Act of 2008,'' by removing all language that limits the health care benefit available to covered children born with spina bifida to only health care that is needed to treat spina bifida and associated conditions. As revised, § 17.901(a) will allow VA to furnish comprehensive health care to beneficiaries born with spina bifida. We also propose to make a technical correction to § 17.901(b) by removing an errant reference to spina bifida in the first sentence. We also propose to update mailing information for the Health Administration Center for claims submitted by or on behalf of spina bifida beneficiaries and beneficiaries with other covered birth defects.

The 2008 statutory amendments referenced above likewise necessitate making conforming amendments to § 17.902. We also propose to change ''benefits advisor'' in the first paragraph to reflect a recent change in the position title.

Authority Citations

We, additionally, propose to revise several authority citations in 38 CFR part 17 to chapter 18 sections that have been repealed and redesignated. Public Law 108–183, which we are implementing in this rulemaking, added new section 1821 and redesignated then section 1821 as new section 1831.

Therefore, we propose to remove the references to old section 1821 and replace them with a reference to section 1831 in the authority citations in §§ 17.900, 17.901, 17.902, 17.903, 17.904, and 17.905, as applicable. In addition, references to new section 1821 have been added in the authority citations in §§ 17.900 and 17.901, as applicable.

IV. Vocational Rehabilitation and Employment

In addition to amending VA regulations concerning the monetary allowance and health care, we also propose to amend certain sections of subpart M of part 21 of title 38 CFR that govern VA's provision of vocational training and rehabilitation to certain veterans' children to conform with the revisions proposed to be made in part 3 of that title affecting other benefits and services authorized under 38 U.S.C. chapter 18. In § 21.8010, we propose to cross reference 38 CFR 3.814 to define the term ''Veteran with covered service in Korea'' and make other conforming amendments to that section consistent with the revisions proposed to be made in part 3.

Conforming Amendments

We also propose to amend other part 21 regulations that contain references to benefits under 38 U.S.C. chapter 18 for children of Vietnam veterans.

The regulations we are amending to conform with the amendments to 38 U.S.C. chapter 18 include 38 CFR 21.8010(a) (which lists the definitions for ''eligible child'' and ''spina bifida''), § 21.8012 (which covers evaluation of a child with spina bifida for vocational training purposes), and § 21.8014 (which covers the procedure and time limit for filing an application to apply for participation in a vocational training program for a child with spina bifida).

Authority Citations

We additionally propose to revise several authority citations in 38 CFR part 21 to chapter 18 sections that have been repealed and redesignated.

Public Law 108–183, which we are implementing in this rulemaking, added new section 1821, and redesignated then sections 1821, 1822, and 1824, as new sections 1831, 1832, and 1834, respectively.

Therefore, we propose to remove the references to old section 1821 and replace them with a reference to section 1831; remove the references to section 1822 and replace them with a reference to section 1832; and remove the references to section 1824 and replace them with a reference to 1834 in the authority citations in §§ 21.8010, 21.8014, 21.8016, and 21.8022, as applicable.

In addition, references to new section 1821 have been added in the authority citations in §§ 21.8010, 21.8012, and 21.8014, as applicable.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule has been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.019, Veterans Rehabilitation-Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.026, Veterans State Adult Day Health Care; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 1, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR chapter I as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.27(c) by:

a. Revising the paragraph heading.

b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

* * * * *

3. Amend § 3.29(c) by:

a. Removing ''who are children of Vietnam veterans'' and adding, in its place, ''who are children of Vietnam veterans or children of veterans with covered service in Korea''.

b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.29 Rounding.

* * * * *

(c) * * *

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 1821, 5312)

4. Amend § 3.31:

a. In the introductory paragraph, by removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.

b. By revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5111)

5. Amend § 3.105(g) by:

a. Revising the paragraph heading.

b. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5112(b)(6))

* * * * *

6. Amend § 3.114(a) by:

a. Removing ''who is a child of a Vietnam veteran'' both times it appears and adding, in its place, ''who is a child of a Vietnam veteran or child of a veteran with covered service in Korea''.

b. Revising the authority citation at the end of the paragraph.

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1832, 5110(g))

* * * * *

7. Amend § 3.216 by:

a. Adding ''or'' preceding ''a monetary allowance.''

b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1832, 5101(c))

§ 3.261 [Amended]

8. Amend § 3.261(a)(40) by removing ''who are children of Vietnam veterans (38 U.S.C. 1823(c))'' and adding, in its place, ''who are children of Vietnam veterans or children of veterans with covered service in Korea (38 U.S.C. 1833(c))''.

9. Amend § 3.262(y) by:

a. Revising the paragraph heading.

b. Removing ''who is the child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.

c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

10. Amend § 3.263(g) by:

a. Revising the paragraph heading.

b. Removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.

c. Revising the authority citation at the end of the paragraph.

The revisions read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

(Authority: 38 U.S.C. 1833(c))

* * * * *

11. Amend § 3.272(u) by:

a. Revising the paragraph heading.

b. Removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.

The revision reads as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

12. Amend § 3.275(i) by:

a. Revising the paragraph heading.

b. Removing ''who is a child of a Vietnam veteran'' and adding, in its place, ''who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea''.

The revision reads as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* * * *

* * * * *

13. Amend § 3.307(a)(6) by:

a. Adding a new § 3.307(a)(6)(iv) and a cross reference after § 3.307(a)(6)(iii).

b. Revising the authority citation at the end of new § 3.307(a)(6)(iv).

The addition and revision read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *

(6) * * *

(iv) A veteran who, during active, military, naval, or air service, served between April 1, 1968, and July 31, 1969, in a unit that operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

Cross Reference: 38 CFR 3.814(c)(2).

(Authority: 38 U.S.C. 501(a), 1116(a)(3), 1821)

* * * * *

14. Revise § 3.403 by:

a. In § 3.403(b), removing ''An award of the monetary allowance'' and adding, in its place, ''Except as provided in § 3.814(e), an award of the monetary allowance''.

b. In § 3.403(b), removing ''date of claim, but'' and adding, in its place, '' the later of the date of claim or the date entitlement arose, but''.

c. Revising the authority citation for § 3.403(b).

d. Revising the authority citation for § 3.403(c).

e. Adding new § 3.403(d) including the authority citation for this paragraph (d).

f. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

§ 3.403 Children.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1805, 1832, 5110)

(c) * * *

(Authority: 38 U.S.C. 1815, 1832, 1834, 5110)

(d) *Monetary allowance under 38 U.S.C. 1821 for an individual suffering from spina bifida who is a child of a veteran with covered service in Korea.* Except as provided in § 3.814(e), an award of the monetary allowance under 38 U.S.C. 1821 based on the existence of an individual suffering from spina bifida who is a child of a veteran with covered service in Korea will be effective from either the date of birth if claim is received within 1 year of that date, or the later of the date of claim or date entitlement arose, but not earlier than December 16, 2003.

(Authority: 38 U.S.C. 1821, 1832, 5110)

15. Amend § 3.503 by:

a. Revising the heading of paragraph (b).

b. Removing the authority citation for paragraph (b).

c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.*

* * * * *

(Authority: 38 U.S.C. 501, 1832, 5112(b))

16. Amend § 3.814 by:

a. Revising the section heading.

b. In paragraph (a), removing ''is or was a Vietnam veteran'' and adding, in its place, ''is or was a Vietnam veteran or a veteran with covered service in Korea'' and by removing ''are or were both Vietnam veterans'' and adding, in its place, ''are or were both Vietnam veterans or veterans with covered service in Korea''.

c. Redesignating paragraphs (c) (2) and (3) as (c)(3) and (4) respectively.

d. Adding a new paragraph (c)(2).

e. In paragraph (c)(3), as redesignated, removing ''Vietnam era.'' and adding, in its place, ''Vietnam era, or whose biological father or mother is or was a veteran with covered service in Korea and who was conceived after the date on which the veteran first had covered service in Korea as defined in this section.'' and by removing ''of a Vietnam veteran.'' and adding, in its place, ''of a Vietnam veteran or a veteran with covered service in Korea.''.

f. In paragraph (e), removing ''claim or'' and adding, in its place, ''claim (or the date of birth if the claim is received within 1 year of that date) or''.

g. Adding a cross reference immediately following paragraph (f).

h. Revising the authority citation at the end of the section.

The addition and revisions read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran or a veteran with covered service in Korea.

* * * * *

(c) * * *

(2) *Covered service in Korea.* For the purposes of this section, the term ''veteran with covered service in Korea'' means a person who served in the active military, naval, or air service in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and who is determined by VA, in consultation with the Department of Defense, to have been exposed to a herbicide agent during such service. Exposure to a herbicide agent will be conceded if the veteran served between April 1, 1968, and July 31, 1969, in a unit that operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period.

* * * * *

Cross Reference: 38 CFR 3.307(a)(6)(iv).

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

17. Amend § 3.815 by revising the authority citation at the end of the section to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

* * * * *

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

PART 17—MEDICAL

18. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

19. Revise the undesignated center heading preceding § 17.900 to read as follows:

Health Care Benefits for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects

20. Amend § 17.900 by:

a. Adding in alphabetical order, the definition of ''Veteran with covered service in Korea''.

b. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 17.900 Definitions.

* * * * *

Veteran with covered service in Korea for purposes of spina bifida means the same as defined at § 3.814(c)(2) of this title.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821, 1831)

21. Amend § 17.901 by:

a. In paragraph (a), removing ''Vietnam veteran's'' and adding, in its place, ''Vietnam veteran or veteran with covered service in Korea's'', and by removing ''with such health care as the Secretary determines is needed by the child for spina bifida'' and adding, in its place, ''with health care as the Secretary determines is needed''.

b. In paragraph (b), removing ''spina bifida or other covered birth defects'' and adding, in its place, ''covered birth defects (other than spina bifida)''.

c. In paragraph (d)(3), removing ''300 S. Jackson Street. Denver, CO 80209'' and adding, in its place, ''3773 Cherry Creek North Drive, Denver, CO 80246''.

d. Revising paragraph (d)(4) and the authority citation at the end of the section.

e. Revising the Note at the end of the section.

The revisions read as follows:

§ 17.901 Provisions of Health care.

* * * * *

(d) * * *

(4) The mailing address of the Health Administration Center for claims submitted pursuant to either paragraph (a) or (b) of this section is P.O. Box 469065, Denver, CO 80246–9065.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

Note to § 17.901: Under this program, beneficiaries with spina bifida will receive comprehensive care through the Department of Veterans Affairs. However, the health care benefits available under this section to children with other covered birth defects are not comprehensive, and VA will furnish them only health care services that are related to their covered birth defects. With respect to covered children suffering from spina bifida, VA is the exclusive payer for services paid under 17.900 through 17.905, regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. As to children with other covered birth defects, any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to the covered birth defects.

22. Amend § 17.902 by:

a. In the first sentence of paragraph (a), removing ''benefits advisor'' and adding, in its place, ''customer service representative''.

b. In paragraph (a), removing the second sentence and adding two new sentences in its place.

c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.902 Preauthorization.

(a) * * * Authorization will only be given in spina bifida cases where there is a demonstrated medical need. In cases of other covered birth defects, authorization will only be given where there is a demonstrated medical need related to the covered birth defects.

* * *

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

23. Amend § 17.903 by revising the authority citation at the end of the section to read as follows:

§ 17.903 Payment.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

* * * * *

24. Amend § 17.904 by revising the authority citation at the end of the section to read as follows:

§ 17.904 Review and appeal process.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

* * * * *

25. Amend § 17.905 by revising the authority citation at the end of the section to read as follows:

§ 17.905 Medical records.

* * * * *

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1831)

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans and Veterans With Covered Service in Korea—Spina Bifida and Covered Birth Defects

26. The authority citation for part 21, subpart M continues to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

27. Revise the heading of subpart M as set forth above.

28. Amend § 21.8010:

a. In paragraph (a), by adding in alphabetical order, the definition of ''Veteran with covered service in Korea''.

b. In paragraph (a) in the definition of ''Eligible child'' by removing ''3.814(c)(2)'' and adding, in its place, ''3.814(c)(3)''.

c. In the definition of ''Spina bifida'' by removing ''§ 3.814(c)(3)'', and adding, in its place, ''§ 3.814(c)(4)''.

d. Revising the authority citation for paragraph (a).

e. Revising the authority citation for paragraph (b).

The addition and revisions read as follows:

§ 21.8010 Definitions and abbreviations.

(a) * * *

Veteran with covered service in Korea means a veteran defined at § 3.814(c)(2) of this title.

* * * * *

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821, 1831)

(b) * * *

(Authority: 38 U.S.C. 1804, 1811, 1814, 1831)

29. Amend § 21.8012 by:

a. Revising the section heading.

b. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 21.8012 Vocational training program for certain children of Vietnam veterans and veterans with covered service in Korea—spina bifida and covered birth defects.

* * * * *

(Authority: 38 U.S.C. 1804, 1812, 1814, 1821)

30. Amend § 21.8014 by:

a. In paragraph (a), removing ''Vietnam veteran'', and adding, in its place, ''Vietnam veteran or veteran with covered service in Korea''.

b. In paragraph (a)(2), removing ''Vietnam veteran's'', and adding, in its place, ''Vietnam veteran or veteran with covered service in Korea's''.

c. Revising the authority citation for paragraph (a).

d. Revising the authority citation for paragraph (b).

The revisions read as follows:

§ 21.8014 Application.

(a) * * *

(Authority: 38 U.S.C. 1804(a), 1821, 1832, 5101

(b) * * *

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1831)

31. Amend § 21.8016 by revising the authority citation for paragraphs (a), (b), and (d) to read as follows:

§ 21.8016 Nonduplication of benefits.

(a) * * *

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(b) * * *

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

* * * * *

(d) * * *

(Authority: 38 U.S.C. 1804, 1814, 1834)

32. Amend § 21.8022(b) by revising the authority citation at the end of the paragraph to read as follows:

§ 21.8022 Entry and reentry.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1804, 1814, 1832)

[FR Doc. E9–17035 Filed 7–23–09; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register
Vol. 74, No. 141
Friday, July 24, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection for the Summer Food Service Program (SFSP). Pursuant to Section 13 of the Richard B. Russell National School Lunch Act (NSLA), the SFSP provides assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. Subsection (m) of the statute directs States and service institutions participating in the SFSP to keep accounts and records necessary to enable the Secretary to determine whether there has been compliance with this section and the SFSP regulations. This information collection concerns the efforts required of States and service institutions to comply with the Secretary's requests for information. This proposed collection is a revision of the currently approved collection for the SFSP.

DATES: Written comments must be submitted by September 22, 2009.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments maybe sent to: Mrs. Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service (FNS), U.S. Department of Agriculture, 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Rodgers-Kuperman at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Summer Food Service Program.

OMB Number: 0584–0280.

Expiration Date: January 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13 of the NSLA, as amended, 42 U.S.C. 1761, authorizes the Summer Food Service Program to provide assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. The purpose of this submission to OMB is to obtain approval to continue the discussed information collection. States and service institutions participating in the SFSP will submit to FNS account and record information reflecting their efforts to comply with statutory and regulatory Program requirements.

Respondents: The respondents are state agencies and not-for-profit institutions.

Estimated Number of Respondents: 53 State agencies, 3,842 sponsors, and 32,697 camps.

Estimated Total Annual Responses: 20.

Estimated Hours per Response: 1.

Estimated Annual Burden Hours: 731,840.

Dated: July 16, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–17719 Filed 7–23–09; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

American Recovery and Reinvestment Act of 2009 Business and Industry Guaranteed Loan Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Development Business and Cooperative Programs are administered through USDA (''the Agency''). This Notice announces the availability of stimulus assistance provided pursuant to Title 1 of Division A of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5).

DATES: Applications will be accepted until September 15, 2010, or until funds are expended. Program funding expires September 30, 2010.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through September 22, 2009. Comments on the paperwork burden must be received by this date to be assured of consideration.

ADDRESSES: If you wish to apply for assistance or are in need of further information, contact the USDA Rural Development State Office in the State where your project is located. A list of USDA Rural Development State Offices is available at *http://www.rurdev.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Bonnet, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3221, Washington, DC 20250–3221; *e-mail:*

Rick.Bonnet@wdc.usda.gov; telephone (202) 720–1804.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act Statement

This Notice is being issued without advance rulemaking or public comment. The Administrative Procedure Act (''APA'', 5 U.S.C. 553), has several exemptions to rulemaking requirements. Among them is an exemption for matters relating to Federal benefits, but under the provisions of the ''Statement of Policy of the Secretary of Agriculture effective July 24, 1971,'' issued by Secretary Hardin in 1971 (36 FR 13804 (the ''Hardin Memorandum''), the Department will normally engage in rulemaking related to Federal benefits despite that exemption. However, the Hardin Memorandum does not waive certain other APA-contained exemptions, in particular the ''good cause'' exemption found at 5 U.S.C. 553(b)(3)(B), which allows effective government action without rulemaking procedures where withholding the action would be ''impracticable, unnecessary, or contrary to the public interest.'' The Hardin memorandum specifically provides for the use of the ''good cause'' exemption, albeit sparingly, when a substantial basis for so doing exists, and where, as will be described more fully below, that substantial basis is explained.

USDA has determined, consistent with the APA and the Hardin Memorandum, that making Recovery Act funds available under the Business and Industry (B&I) Guaranteed Loan Program as soon as possible is in the public interest. Withholding this Notice to provide for public notice and comment would unduly delay the provision of benefits associated with the provision of the Recovery Act funds and be contrary to the public interest. Should the actual practice of the program produce reasons for program modifications those modifications can be brought to the attention of the Department and changes made in the future rulemaking process.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Rural Development is requesting comments from all interested individuals and organizations on a new information collection for the provision of Recovery Act funds under the B&I Guaranteed Loan program. The information collection activities associated with this Notice have been submitted under the emergency processing procedures of the Paperwork Reduction Act (PRA) of 1995. As discussed above in the APA section, USDA believes that there is good cause to forgo any delay associated with the opportunity for advance public comment. However, in accordance with the requirements of the PRA, USDA Rural Development will ultimately seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day public comment period regarding the information collection activities contained in this Notice.

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from Rural Development. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

Title: Business and Industry Guaranteed Loan Program American Recovery and Reinvestment Act of 2009.

OMB Control Number: New.

Type of Request: New collection.

Abstract: Under this Notice, the Agency is making available Recovery Act funds for the B&I Guaranteed Loan Program. In order to appropriately use these funds for guaranteeing B&I loans, it is necessary to obtain information on rural areas experiencing persistent poverty, outmigration, high unemployment, and under-served and under-represented groups and areas, which are among those areas hardest hit by the current economic crisis.

The majority of proposed information collection activities associated with this Notice will be essentially the same as the currently approved Business and Industry (B&I) Guaranteed Loan Program collection, OMB Number: 0570–0017, with the exception of certain requirements associated with the definition of quality of jobs, such as:

- To document that the business qualifies under the Work Opportunity Tax Credit Program authorized by the Small Business and Work Opportunity Tax Act of 2007, lenders must obtain from the borrower a copy of the certification from the appropriate State workforce agency.
- To document that the business offers a healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer, the lender must obtain from the borrower a copy of Internal Revenue Service, Department of Labor Form 5500 (Annual Return/Report of Employee Benefit Plan) and provide a written certification that the employer pays at least 50 percent of the premiums. The collection of information is vital to the Agency to make wise decisions regarding the eligibility of applicants for B&I Guaranteed Loans that are guaranteed using Recovery Act funds in order to ensure compliance with the provisions of this Notice. In summary, this collection of information is necessary in order to appropriately use Recovery Act funds for guaranteeing B&I loans. Further, other than the information collections associated with the general requirements of the Recovery Act, the vast majority of these collections are currently being made with respect to the current B&I program. The focus of the new collections concerns requirements of the definition of quality of jobs.

The following estimates are for $1.7 billion of Recovery Act funds available to the B&I Guaranteed Loan Program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.6 hours per response.

Respondents: Rural businesses.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 22.4.

Estimated Number of Responses: 15,703.

Estimated Total Annual Burden (hours) on Respondents: 25,409.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this Notice will be summarized and included in the request for OMB

approval. All comments will also be a matter of public record.

Overview Information

Federal Agency Name. Rural Development, Rural Business-Cooperative Service.

Funding Opportunity Title. Business and Industry Guaranteed Loan Program.

Announcement Type. Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number assigned to the American Recovery and Reinvestment Act funds for the Business and Industry Guaranteed Loan program is 10.782.

DATES. Applications will be accepted until September 15, 2010, or until funds are expended. Program funding expires September 30, 2010.

ADDRESSES. If you wish to apply for assistance or are in need of further information, contact the USDA Rural Development State office in the State where your project is located. A list of USDA Rural Development state offices is available at: *http://www.rurdev.usda.gov*.

I. Funding Opportunity Description

A. *Purpose.* This Notice is issued pursuant to the recently passed American Recovery and Reinvestment Act of 2009. The Recovery Act provides for additional funds to the Agency for use under the B&I Guaranteed Loan Program. With this Notice, the Agency is announcing the availability of funding through the B&I Guaranteed Loan program for eligible projects.

The provisions in this Notice apply only to the award of Recovery Act funds made available to the B&I Guaranteed Loan Program pursuant to this Notice. These provisions do not apply to loans funded under the Omnibus Appropriations Act of 2009 or the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009.

B. *Statutory Authority.* This program is authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

C. *Definitions.* The following definitions are applicable to this Notice.

High unemployment. Any area that has an unemployment rate that is 125 percent of the nationwide rate or greater.

Outmigration. Any area of long-term population decline and job deterioration based on reliable statistical data. Population loss, particularly that which results in loss of jobs, can result from a lower rate of births than deaths and prolonged movement from a place of origin to another location. Outmigration of jobs is the result of traditional jobs not being replaced by new types of jobs. Communities that experience seasonal fluctuations due to tourism will not be considered under this definition. The Agency will use data from the 1980, 1990, and 2000 decennial census to determine if outmigration occurred.

Persistent poverty. Any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1980, 1990, and 2000 decennial census.

Quality jobs. This relates to the quality of the jobs provided by the borrower. For the purposes of this Notice, a quality job is one which:

(i) Pays wages that average at least 125 percent of the Federal minimum wage; or

(ii) Qualifies under the Work Opportunity Tax Credit Program authorized by the Small Business and Work Opportunity Tax Act of 2007; or

(iii) Offers healthcare package to all employees, with at least 50 percent of the premium paid by the employer for employees.

Under-served groups and under-represented areas. Any geographic area and population group that has not historically received the benefits of the B&I program as compared to other areas and groups.

In implementing this definition, State Office Program officials will:

- Analyze their State loan participation data;
- Determine group or groups who typically have not participated in Agency Programs in the areas that are under-served and under-represented (no loans in areas that have need for the benefits of the loans); and
- Determine where projects have been funded and give priority to projects that could be located in areas of greatest need based on the data analysis (under-served groups and under-represented areas).

Under-served groups and under-represented areas generally concern a ''protected class.'' Protected class, a term used in Civil Rights anti-discrimination law, describes groups of people who historically have been treated differently because of their race, color, gender or national origin and are now protected from discrimination and harassment.

Civil Rights laws cover individuals' Ethnicity—Hispanic or Latino or non-Hispanic; and Race—American Indians and Alaska Natives, Asian, Black or African American, Native Hawaiians and Pacific Islanders and White.

Racial and ethnic disparities exist in providing Federal assistance through administration of program funds. Statistics show people of the ''protected class'' have not participated to the level of non-minority participants. To become more transparent and to be proactive in the elimination of disparity, we embrace enhanced program outreach, education, and technical assistance to under-served areas and groups to eliminate disparities. State Program Officials will develop and implement a meaningful outreach plan to assist in eliminating disparity in the delivery of programs to the under-served and under-represented area.

D. *Implementation of Recovery Act provisions.* Consistent with the purposes of the Recovery Act, the Agency has determined that the most effective use of these program funds is to target them to encourage the creation or retention of quality jobs through the extension of business credit in those rural areas of greatest need, most difficult to reach, and among those areas hardest hit by the current economic crisis.

In determining the type of incentives that participating lenders would need to generate quality loans in these critical rural areas, the Agency considered adjustments to several features of the B&I program over which we have control, including the percentage of guarantee, annual renewal fee, and guarantee fee; without compromising Agency underwriting standards.

As a result, the Agency decided to provide for up to 90 percent guarantees to all Recovery Act funded loans that score at least 55 priority points under the Agency priority scoring criteria in 7 CFR 4279.155. In addition, the Agency decided to reduce the guarantee fee to 1 percent and eliminate the annual renewal fee for all B&I Recovery Act funded loans.

The Agency is not proposing changes of the requirements currently reflected in its B&I program regulations, regarding the circumstances under which it will offer a 90 percent guarantee. Rather, it is utilizing certain existing program features to encourage economic stimulus in those rural areas experiencing persistent poverty, outmigration, high unemployment, and under-served and under-represented groups and areas, which are among those areas hardest hit by the current economic crisis. In determining whether a Recovery Act loan applicant will be eligible for up to a 90 percent guarantee, it will be evaluated based on the current B&I regulations at § 4279.155, consistent with the guidance provided in OMB Circular A–129.

II. Funding Information

A. *Available funds.* The Recovery Act provides $126,100,000 in budgetary authority for this program through September 30, 2010, to support loan guarantees based on credit subsidy scoring that is yet to be determined. The available program level under this Notice is $1.7 billion that shall be available to support loan guarantees until September 30, 2010.

B. *Funding limitations.* The Agency will distribute Recovery Act funds on a first-come-first-served basis. Ten percent of Recovery Act funds will be allocated for businesses located in persistent poverty counties, as provided for in the Recovery Act.

III. Program Provisions Specific to Guaranteed Loans

Seeking Recovery Act Funds

This section of the Notice identifies provisions specific to guaranteed loans applications seeking Recovery Act funds. Unless otherwise indicated, these provisions are in addition to those in 7 CFR part 4279, subparts A and B.

A. *Scoring applications.* When awarding administrator points under 7 CFR 4279.155(b)(6), State Directors and the Administrator will award their points to an application only if the proposed project will provide quality jobs and meets at least one of the demographic criteria (outmigration, high unemployment, under-served/under-represented areas and groups, and persistent poverty counties).

B. *Guarantee fee.* Notwithstanding the provisions of 7 CFR 4279.107(a), the guarantee fee for Recovery Act funded guaranteed loans shall be one (1) percent.

C. *Annual renewal fee.* The annual renewal fee specified in 7 CFR 4279.107(b) does not apply to Recovery Act funded guaranteed loans.

D. *Ineligible purposes.* Notwithstanding the provisions of 7 CFR 4279.113, the following purposes are ineligible for Recovery Act funded guaranteed loans:

(1) Zoos;

(2) Aquariums;

(3) Convenience stores, unless the store provides quality jobs and sells or will sell E85 fuel upon completion of the project;

(4) Pools;

(5) Water parks;

(6) Hotels/motels and other facilities that have pools or water parks;

(7) Golf courses;

(8) Casinos or other gambling establishments; and

(9) Museums.

E. *Percent guarantee.* Notwithstanding the criteria specified in 7 CFR 4279.119(b), applications that score at least 55 points using the B&I scoring criteria in 7 CFR 4279.155 are eligible for up to a 90-percent guarantee as provided in 7 CFR 4279.119(b).

IV. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability and, where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TTY). To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (866) 632–9992 (voice), or (202) 401–0216 (TDD).

V. Civil Rights Compliance Requirements

All awards are subject to the equal opportunity and nondiscriminatory requirements in accordance with the Equal Credit Opportunity Act, 7 CFR 15d, conducted programs by USDA and RD Instructions 7 CFR part 1901–E.

VI. Wage-Rate Requirements

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of 40 U.S.C. In this regard, the award will contain the following provision:

Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act, 2009

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of 40 U.S.C.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration and/or repair (including painting and decorating). Projects exceeding $100,000 must also incorporate requirements of 29 CFR 5.5(b).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan No. 14.

VII. National Environmental Policy Act of 1969

Implementation of the Recovery Act will utilize existing environmental review compliance requirements in accordance with its statutory and regulatory obligations. The Agency's respective environmental policies and procedures are codified in 7 CFR part 1940, subpart G. All relevant environmental compliance requirements are integrated in the above regulations, including the National Environmental Policy Act, National Historic Preservation Act and Endangered Species Act compliance processes.

All program applicants are required to integrate environmental factors, along with other technical and financial considerations, into early project planning and design. The environmental review process must be completed, including all public notice requirements prior to funding any proposals.

VIII. Accountability and Transparency and Responsibility for Informing Sub-Recipients

Recipients and their sub-recipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times for

which they have active Federal awards funded with Recovery Act funds.

All awards will contain the following tracking and documenting requirements:

Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-Recipients

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215, subpart 21 and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of part III on the SF–SAC by CFDA number, and inclusion of the prefix ''ARRA'' in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of part III on the SF–SAC.

(c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients to include their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of Recovery Act funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

Certifications Pursuant to Section 1511 of the Recovery Act

With respect to these funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of these funds to be used, and shall be posted on *http://www.recovery.gov.* A State or local agency may not receive infrastructure investment funding from funds made available in the Recovery Act unless this certification is made and posted.

IX. Set Aside

Ten (10) percent of funding shall be allocated to assist businesses in persistent poverty counties.

X. Whistleblower Protection

Each recipient or sub-recipient awarded funds made available under the Recovery Act shall promptly refer to the USDA Office of Inspector General, any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

Section 1553(a) of the Recovery Act Provides Protection for Whistleblowers

Prohibition of Reprisals—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

(1) Gross mismanagement of an agency contract or grant relating to covered funds;

(2) A gross waste of covered funds;

(3) A substantial and specific danger to public health or safety related to the implementation or use of covered funds;

(4) An abuse of authority related to the implementation or use of covered funds; or

(5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

XI. Buy American

None of the funds made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States or unless USDA Rural Development waives the application of this provision. (Sec. 1605)

(a) If the applicant's requested use of Recovery Act funds involves the construction, alteration, maintenance, or repair of a public building or public work, and does not involve iron, steel, and or manufactured goods covered under international agreements, the following is applicable:

Notice of Required Use of American, Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act, 2009

(1) *Definitions.* Manufactured good, public building and public work, and steel, as used in this Notice, are defined in 2 CFR 176.140.

(2) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(3) *Exceptions.* Section 1605 of the Recovery Act may apply to project-specific exceptions. When one of the following exceptions applies, the loan approval official may allow the loan,

grant, or loan guarantee recipient to use foreign iron, steel, or manufactured goods in a given project. Project specific exceptions may not be used unless requested by the applicant, approved by the Agency, and published in the **Federal Register** as noted below.

Justifications: Any exception must be based on one of the following three justifications:

- *Non-availability.* Iron, steel, or relevant manufactured goods are not produced or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality.
- *Unreasonable cost.* The cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25%.
- *Public interest.* The application of these restrictions would be inconsistent with the public interest.

(4) *International Agreements.* Section 1605(d) does not apply to implementation of the Buy American provisions in Recovery Act for USDA, Rural Development programs.

Dated: July 17, 2009.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–17600 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest, California; Harris Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Shasta-Trinity National Forest proposes to improve forest health and restore fire-adapted ecosystem characteristics on approximately 3,000 acres of National Forest System Lands in and adjacent to the Harris Mountain Late-Successional Reserve. Ground and ladder fuels would be reduced. In addition, forested stands would be thinned to yield a fire-resilient forest where periodic low-intensity surface fires can be safely reintroduced. Selective removal of trees is proposed to produce forested areas dominated by fire-resilient tree species with sustainable densities and to exhibit stand structure that provides habitat for late-seral dependent species. Reducing overcrowded conditions will enhance tree survival from insects, drought and disease, and natural disturbance. Trees to be removed would generally be smaller in size than trees retained; renewable by-products including commercial sawtimber and energy from biomass are expected. Dying and diseased mature lodgepole stands within the project area would be regenerated through the removal of most overstory trees. Aspen and oak hardwood trees species will be retained. Removal of conifers competing with existing aspen and oak hardwood trees will enhance the overall diversity of forest stands. Surface and ladder fuel loads will be reduced through removal of brush and small-diameter trees in the forest understory and by underburning. Proposed road reconstruction, closure and decommissioning will aid in restoration of drainage patterns and sediment regimes supporting aquatic systems. The project is located in Siskiyou County within portions of T41N, R1E, section 1; T42N R1E section 36; T42N R2E sections 17–21 and 28–36; and T41N R2E sections 1–6 and 9 Mt. Diablo Meridian.

DATES: Comments concerning the scope of the analysis must be received no later than 30 days after the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in April 2010 and the final environmental impact statement is expected in September 2010.

ADDRESSES: Send written comments to District Ranger Priscila S. Franco, Shasta-McCloud Management Unit, 204 W. Alma St., Mt. Shasta, California 96067. Electronic comments can be sent via e-mail to: *comments-pacificsouthwest-shasta-trinity-mtshasta-mccloud@fs.fed.us.*

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

FOR FURTHER INFORMATION CONTACT: John Natvig, P.O. Box 688, Hot Springs, SD 57747, telephone (605) 745–3253, e-mail *jnatvig@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposed action is to improve forest health and growth, protect and enhance conditions of late-successional forest ecosystems and reduce fuel loading. The 9,100 acre project area falls within lands identified by the Shasta-Trinity Land and Resource Management Plan (Forest Plan) as Matrix (76 percent) and Late-Successional Reserve (24 percent). Forest stands are overcrowded resulting in competition for water, nutrients and sunlight—conditions which increase the risk of insect infestation. Lodgepole pine stands in the project area are overmature and infected with disease. The overstory trees are dying and new trees are becoming established; however, disease is spreading from the overstory to the new stand. Natural disturbances, such as wildfire that released aspen and oak hardwoods, have been suppressed over the last 60 years; hardwoods are in decline as a result. Conifer species dominate the overstory canopy and out-compete aspen and oak hardwoods for available sunlight and other site resources. Late-Successional Reserves are allocated by the Forest Plan to provide late-successional and old-growth forest; however, less than one percent of this reserve is currently providing such habitat (Shasta-Trinity National Forest Wide Late-Successional Reserve Assessment, 1999). Dense forest conditions delay the development of early seral to mid-successional conditions and mid-successional to late-successional stands. Dense understory trees coupled with an accumulation of surface fuels increases the chances of a wildfire reaching the overstory canopy, yielding the potential for stand replacement. The proposed action is also designed to provide for proper drainage of system roads to minimize surface erosion. It will also ensure that culverts in the area are fully functional and of proper size to facilitate area drainage and prevent erosion-causing water flow over the surface of the road. There are approximately two miles of unclassified and Forest System roads in the project area that are unnecessary for long term management; the proposed action would decommission these road segments.

Proposed Action

The proposed action includes: (1) Thinning in mixed conifer stands; (2) lodgepole pine regeneration harvest; (3) enhancement and retention of hardwood species; (4) fuel treatments; (5) road reconstruction; and (6) road decommissioning.

Activities included in this proposal would result in:

(a) Approximately 1,650 acres would be thinned by removing understory and midstory trees to improve stand health, growth and resistance to insect and disease;

(b) Approximately 400 acres of overstocked stands within the Harris Mountain Late Successional Reserve would be thinned by removing primarily understory and midstory trees to promote the growth of large diameter trees, improve stand health and reduce ladder fuels. Thinning treatments would retain 10 percent or more of the stand in unthinned patches and up to 15 percent of the stand would be in heavily thinned patches or openings up to ¼ acre in size for stand diversity;

(c) Approximately 260 acres of overstocked and diseased lodgepole pine stands would be regenerated by harvesting most overstory trees. A minimum of 15 percent of the overstory would remain. A new stand would be established through natural regeneration and targeted planting;

(d) Oak trees within harvest units and one aspen stand of approximately 20 acres would be released by removing conifers;

(e) Forest fuels would be reduced by thinning to decrease understory and mid-story stocking on a total of approximately 2,050 acres. Following harvest, approximately 320 acres of heavy surface fuels would be machine-piled and burned. Underburning some areas with a relatively cool surface fire would reduce surface fuel loading. Following thinning, 660 acres would be underburned and prescribed fire would reduce fuels on 620 acres outside harvest units;

(f) Salvage harvest within the Harris Mountain Late-Successional Reserve would reduce fuel loading on 30 acres;

(g) Road management would decrease the open-road density by decommissioning approximately ½ mile of Forest System road and 1½ miles of unclassified roads. Erosion of existing roads would be decreased through improved road drainage, culvert replacement and surfacing roads with rock.

Forest thinning and fuels reduction would be accomplished primarily through commercial harvest. Harvest operations would yield sawtimber and chip products. Trees would be felled, removed and processed with mechanized equipment. Harvested trees would be transported from the stump to central landing areas adjacent to roads where they would be limbed and processed into sawtimber logs or chips.

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need or take no action.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The project is included in the Shasta-Trinity National Forest's quarterly schedule of proposed actions (SOPA). Information on the proposed action will also be posted on the forest Web site (*http://www.fs.fed.us/r5/shastatrinity/projects*) and advertised in both the Redding Record Searchlight and the Mount Shasta Herald.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: July 16, 2009.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. E9–17515 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice of FCIC's Proposed Pricing Methodology for Grain Sorghum

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: Section 12009 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) requires the Federal Crop Insurance Corporation (FCIC) to obtain the services of five expert reviewers to ''develop and recommend a methodology for determining an expected market price for grain sorghum for both the production and revenue-based plans of insurance to more accurately reflect the actual market price at harvest'' and for FCIC to publish the selected methodology for notice and comment on the methodology.

DATES: Written comments on this notice will be accepted until September 22, 2009. A public meeting will be held on August 20, 2009, at 9 a.m., at 6501 Beacon Drive, Kansas City, MO 64133 to discuss the proposed methodology.

ADDRESSES: Interested persons are invited to submit written comments to Quintrell Hollis, United States Department of Agriculture (USDA), Product Design Branch, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133. Written comments may also be submitted electronically to: *grainpricecomments@rma.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Quintrell Hollis at the Kansas City, MO address listed above, telephone (816) 926–3421.

SUPPLEMENTARY INFORMATION:

Background: The Risk Management Agency (RMA), on behalf of FCIC, uses the United States Department of Agriculture (USDA) estimates to establish grain sorghum price elections. The Actual Production History (APH) plan of insurance relies heavily on projections from USDA's World Agricultural Supply and Demand Estimates. The revenue-based plans of insurance use USDA grain sorghum-to-corn ratio multiplied by a futures price. The USDA's grain sorghum estimate reflects season average price, but the National Sorghum Producers did not feel that this process offers grain sorghum producers a price that adequately reflects harvest time price. As a result, section 12009 of the 2008 Farm Bill requires FCIC to contract for the services of five expert reviewers to ''develop and recommend a methodology for determining an expected market price for grain sorghum for both the production and revenue-based plans of insurance to more accurately reflect the actual price at harvest.'' The legislation further requires FCIC to review the recommendations, consider the recommendations when determining an appropriate methodology, publish its proposed methodology for public comment, and implement a methodology that is transparent and replicable for 2010 crop year. The expert reviewers, all agricultural economists with experience in the grain sorghum and corn markets, are from within USDA, the grain sorghum industry and institutions of higher learning. They are:

- Dr. Holly Wang, Purdue University.

• Dr. James Richardson, Texas A&M University.

• Chris Cogburn, National Sorghum Producers.

• Robert Dismukes, Economic Research Service.

• Greg Pompelli, Economic Research Service.

Summary of Expert Reviews

The Economic Research Service (ERS) reviews were similar and recommended no changes to current pricing methodology. ERS reviews revealed that grain sorghum and corn prices across all States and all years are highly correlated.

Purdue University provided a methodology that proposed regression equations by State using National Agricultural Statistics Service (NASS) cash price data at State level or if no State level NASS data were available, national level NASS price data. The model used data from 2004–2008.

The National Sorghum Producers proposed a regression model based on published monthly NASS prices, exports and total use of grain sorghum to calculate a grain sorghum-corn ratio. The grain sorghum-corn ratio was then multiplied by the USDA corn price estimate for APH policies and for revenue policies the ratio was multiplied by the corn futures price. The model used data from 1990–2008.

Texas A&M University proposed a regression model based on regional grain sorghum cash price data and corn futures price at the Chicago Board of Trade. Price elections were developed at the national level and the model uses data from 1979–2008.

Proposed Methododogy Selected

FCIC intends to implement the methodology submitted by Texas A&M University. This methodology met the requirements of the 2008 Farm Bill of being transparent and replicable. RMA determined that this methodology was the most accurate predictor of grain sorghum prices at harvest time.

Details about this methodology as well as the other methodologies proposed by the expert reviewers can be found at *http://www.rma.usda.gov*.

Signed in Washington, DC on July 20, 2009.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–17616 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Advisory Committee (RAC) will hold its third meeting.

DATES: The meeting will be held on September 2, 2009, and will begin at 6 p.m. The meeting will be held in Alpine County at the Alpine Early Learning Center, 100 Foothill Road, Markleeville, CA 96120.

FOR FURTHER INFORMATION CONTACT: Marnie Bonesteel, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Carson Ranger District, 1536 S. Carson Street, Carson City, NV 89701 (775) 884–8140; e-mail: *mbonesteel@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Vote on committee bylaws and elect a chairperson, (2) Vote on Title II projects, (3) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 16, 2009.

Genny Wilson,

Designated Federal Officer.

[FR Doc. E9–17361 Filed 7–23–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on August 10, 2009 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to vote on projects, determine the need for an August 17th meeting, and schedule meetings and topics for 2010.

DATES: The meeting will be held August 10, 2009, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Beth Martinez, Committee Coordinator, USDA, Stanislaus National Forest, Mi-Wuk Ranger District, P.O. Box 100, Mi-Wuk Village, CA 95346, (209) 586–3234; E-mail: *bethmartinez@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Tuolumne County RAC plans to expand its geographic area to include Mariposa County and will be reviewing and recommending projects in both counties. Agenda items to be covered include: (1) Discussion and voting on projects; (2) determine need for an August 17 meeting; (3) schedule meetings/topics for 2010; (4) public comment on meeting proceedings. This meeting is open to the public.

Dated: July 16, 2009.

Timothy A. Dabney,

Acting Deputy Forest Supervisor.

[FR Doc. E9–17516 Filed 7–23–09; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–941]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 24, 2009.

SUMMARY: On March 5, 2009, the Department of Commerce (''Department'') published its preliminary determination of sales at less than fair value (''LTFV'') in the antidumping duty investigation of certain kitchen appliance shelving and racks (''kitchen racks'') from the People's Republic of China (''PRC''). We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes from the *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591 (March 5, 2009) (''*Preliminary Determination''*). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482–1394 or (202) 482–7906, respectively.

Final Determination

We determine that kitchen racks from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (''Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its preliminary determination of sales at LTFV on March 5, 2009. *See Preliminary Determination.* The period of investigation (''POI'') is January 1, 2008 to June 30, 2008.

On March 10, 2009, Petitioners [1] submitted a letter requesting that the Department issue an amended *Preliminary Determination* for New King Shan (Zhuhai) Co., Ltd. (''New King Shan'') based on information obtained in New King Shan's supplemental Section C Questionnaire response filed on February 27, 2009. On March 27, 2009, the Department issued a memorandum stating that the Department would not issue an amended preliminary determination but that all information submitted subsequent to the *Preliminary Determination* will be considered for final determination.

Between April 13, 2009 and May 27, 2009, the Department conducted verifications of Guangdong Wireking Housewares & Hardware Co., Ltd. (''Wireking''), New King Shan (Zhu Hai) Co., Ltd. (''New King Shan''), and a separate rate respondent, Hangzhou Dunli Import & Export Co., Ltd. (''Hangzhou Dunli''). *See* the ''Verification'' section below for additional information.

Upon the June 9, 2009, release of the fifth of the five verification reports,[2] we invited parties to comment on the *Preliminary Determination.* On June 16, 2009, Petitioners, New King Shan, Wireking, and the Government of China submitted case briefs. On June 24, 2009, Petitioners, Wireking, and New King Shan submitted rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Issues and Decision Memorandum,'' (''Issues and Decision Memorandum''), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room 1117, and is accessible on the World Wide Web at *http://trade.gov/ia/index.asp.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have made changes to the margin calculations for the final determination for New King Shan and have determined that the application of total adverse facts available (''AFA'') is warranted in the case of Wireking. We have revalued certain surrogate values used in the *Preliminary Determination.* The values that were modified for this final determination are those for nickel anode and the surrogate financial ratios. For further details see Issues and Decision Memorandum at Comments 9 and 10, and Memorandum to the File from Kathleen Marksberry, Case Analyst, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9; Subject: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Surrogate Values for the Final Determination, date July 20, 2009 (''Final Surrogate Value Memo'').

In addition, we have made some company-specific changes since the *Preliminary Determination.* Specifically, we have incorporated, where applicable, post-preliminary clarifications based on verification and corrected certain clerical errors for New King Shan. We have also applied partial AFA, where applicable, for various findings from the verification of New King Shan. For further details on these company-specific changes, *see* Issues and Decision Memorandum at Comments 17B, 17C, 17D, 17G, 17H, 17I, 17K, 17L, and 17M. *See* Memorandum to the File from Kathleen Marksberry, Case Analyst: Program Analysis for the Final Determination of Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: New King Shan (Zhuhai) Co., Ltd. (July 20, 2009) (''New King Shan Final Analysis Memo'').

Scope of Investigation

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (''certain kitchen appliance shelving and racks'' or ''the merchandise under investigation''). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

[1] Nashville Wire Products Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists & Aerospace Workers, District Lodge 6 (Clinton, IA) (hereafter referred to as the ''Petitioners'').

[2] *See* Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst: Verification of the Sales and Factors of New King Shan's U.S. affiliate in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 3, 2009) (''New King Shan Affiliate Verification Report''); Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Sales and Factors of Guangdong Wireking Housewares & Hardware Co., Ltd. (''Wireking'') in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 8, 2009) (''Wireking Verification Report''); Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Sales and Factors of Zhu Hai) Co., Ltd. (''New King Shan'') in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 8, 2009) (''New King Shan Zhuhai Verification Report''); Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Responses of Hangzhou Dunli Import and Export Co., Ltd. (''Hangzhou Dunli'') in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 8, 2009); and Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Responses of New King Shan (Zhu Hai) Co., Ltd. (''New King Shan'') in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 9, 2009) (''New King Shan Taiwan Verification Report'').

—Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
—Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
—Side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
—Subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under investigation is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The merchandise under investigation may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, and 8516.90.8000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Affiliation

In the *Preliminary Determination,* the Department determined that, based on the evidence on the record in this investigation and based on evidence presented in Wireking's questionnaire responses, we preliminarily found that Wireking is affiliated with Company G,[3] which was involved in Wireking's sales process, and other companies, pursuant to sections 771(33)(E), (F) and (G) of the Act, based on ownership and common control. In addition to being affiliated, there is a significant potential for price manipulation based on the level of common ownership and control, shared management, shared offices, and an intertwining of business operations. *See* 19 CFR 351.401(f)(1) and (2). Accordingly, we also found that Wireking and Company G should be considered as a single entity for purposes of this investigation.

No other information has been placed on the record since the *Preliminary Determination* to contradict the above information upon which we based our finding that these companies constitute a single entity. Therefore, for the final determination, we continue to find that Wireking and Company G are a single entity pursuant to sections 771(33)(E), (F), and (G) of the Act, based on ownership and common control. We also continue to determine that they should be considered as a single entity for purposes of this investigation. *See* 19 CFR 351.401(f).

Additionally, in the *Preliminary Determination,* we found based on the evidence on the record in this investigation that New King Shan is affiliated with Company A, Company B, Company C, and Company D,[4] pursuant to sections 771(33)(A), (E), (F), and (G) of the Act, based on ownership and common control. No other information has been placed on the record since the *Preliminary Determination* to contradict the above information upon which we based our finding that these companies constitute a single entity. Therefore, for the final determination, we continue to find that New King Shan is affiliated with Company A, Company B, Company C, and Company D, pursuant to sections 771(33)(A), (E), (F), and (G) of the Act, based on ownership and common control.

Use of Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party ''promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

Wireking

Pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we are applying facts otherwise available to Wireking because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to Wireking. Additionally, the Department finds that Wireking withheld information, failed to provide the information requested by the Department in a timely manner and in

[3] The identity of this company is business proprietary information; for further discussion of this company, see Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Julia Hancock, Senior Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliation Memorandum of Wireking, (February 26, 2009) (''Wireking Affiliation Memo'').

[4] The identities of these companies are business proprietary; for further discussion of these companies, see Memorandum to the File from Katie Marksberry, Case Analyst: Preliminary Determination of Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliation Memorandum of New King Shan (Zhuhai) Co., Ltd., (February 26, 2009) (''New King Shan Affiliation Memo'').

the form required, and significantly impeded the Department's ability to calculate an accurate margin for Wireking. Specifically, in its questionnaire responses, Wireking reported that because it produces both subject-kitchen racks and non-subject products and that it does not maintain production records that trace consumption to a specific product, it could not report factors of production (''FOPs'') specific to subject-kitchen racks. Because Wireking had reported its FOPs broadly over all products, we issued numerous questionnaires to Wireking that asked detailed questions of the actual and standard production records maintained by the company, all efforts taken by Wireking to report more kitchen rack-specific FOPs, and provided sample allocation methods for how they might allocate their FOPs on a more specific basis. *See* the Department's January 16, 2009, questionnaire; the Department's January 14, 2009, letter; and the Department's March 16, 2009, questionnaire. Despite our efforts to obtain kitchen rack-specific FOPs, Wireking refused to comply with our requests and maintained that the most accurate method for reporting its FOPs was using a broad allocation over all products (both subject merchandise and non-subject merchandise). However, at verification, we found for the first time that Wireking maintained a standard bill-of-materials and actual production notes, which are generated for each production run of a product. *See* Wireking's Verification Report, at 18. These actual production notes identify the quantity of each product run and the quantity of steel wire, the intermediate product, records of which Wireking repeatedly stated that they do not maintain. *See* Wireking's March 30, 2009, submission at 25. The Department finds that if we had been notified of the existence of these records, we would have been able to obtain FOPs from Wireking on a more specific basis. However, because of Wireking's refusal to answer the entirety of our questions and refusal to attempt to report FOPs on a kitchen rack-specific basis, we only have FOPs that are broadly allocated over both kitchen racks and non-kitchen rack products and do not accurately capture the cost of production of only subject-kitchen racks. Accordingly, the Department finds that the application of facts available is necessary in this case because Wireking's broadly reported FOPs, which includes the most significant input, steel wire rod, and accounts for the majority of the normal value, are inaccurate and unreliable. Therefore, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act, the Department is resorting to facts otherwise available.

In addition, in accordance with section 776(b) of the Act, the Department is applying an adverse inference in selecting the facts available rate, as it has determined that Wireking did not act to the best of its ability to cooperate with the Department in this investigation because it did not disclose until verification that it had the production records that would have allowed the Department to obtain kitchen rack-specific FOPs. As AFA, we are applying the PRC-wide rate of 95.99 percent. For further discussion, please *see* Issues and Decision Memorandum at Comment 16A and Memorandum to the File, through James C. Doyle, Director, Office 9, AD/CVD Operations, and Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Julia Hancock, Senior Case Analyst, Office 9, AD/CVD Operations, Subject: Application of Adverse Facts Available for Guangdong Wireking Housewares & Hardware Co., Ltd. in the Final Determination of the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (July 20, 2009) (''Wireking AFA Memo'').

New King Shan

For the final determination, in accordance with section 776(a)(1) of the Act, we have determined that the use of facts available (''FA'') is warranted for New King Shan's indirect selling expenses for its affiliates. *See* Issues and Decision Memorandum at Comment 17I; New King Shan's Taiwan Verification Report at VE 6; New King Shan's Chicago Verification Report. We note that New King Shan has submitted indirect selling expenses for certain of its affiliates to the Department. However, because the submitted information from New King Shan regarding the total indirect selling expenses for New King Shan's U.S. affiliate and the other affiliated companies includes indirect selling expenses for activity not associated with the U.S. sales, the Department finds that it does not have the necessary information to quantify the portion of the indirect selling expense associated with U.S. sales, pursuant to section 776(a)(1) of the Act. Therefore, as FA, pursuant to section 776(a) of the Act, the Department will calculate the total indirect selling expenses incurred by New King Shan's affiliated companies by multiplying total indirect selling expenses for each company by the ratio of total sales revenue of U.S. sales of subject-kitchen racks divided by total sales revenue of each company, and then multiplying the ratio of total indirect selling expenses for subject-kitchen racks divided by total sales revenue to the gross unit price of each sale.[5] *See* New King Shan Final Analysis Memo. Additionally, in accordance with sections 773(c)(3)(B) of the Act, section 776(a)(2)(A), (B) and (D) of the Act, and section 776(b) of the Act, we have determined that the use of partial AFA is warranted for New King Shan's unverified U.S. duty calculation. *See* Issues and Decision Memorandum at Comment 17K; New King Shan's Taiwan Verification Report at 23. As partial AFA, we are using the highest reported U.S. duty expense reported in New King Shan's U.S. sales database and applying this as the AFA plug for U.S. duties to all sales. *See* New King Shan Final Analysis Memo.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by mandatory respondents Wireking and New King Shan, and separate rate respondent Hangzhou Dunli for use in our final determination. *See* New King Shan Affiliate Verification Report, Wireking Verification Report, New King Shan Zhuhai Verification Report, Hangzhou Dunli Verification Report, and New King Shan Taiwan Verification Report. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination,* we stated that we selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination.* For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

[5] *Mitsubishi Heavy Indus.* v. *United States,* 23 CIT 326, 328 (1999) (''*Mitsubishi*''); *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,* 71 FR 7513 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 11.

Separate Rates

In proceedings involving non-market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers''*), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide''*), and Section 351.107(d) of the Department's regulations.

In the *Preliminary Determination,* we found that New King Shan, Wireking, and the separate rate applicants (Marmon Retail Services Asia, Jiangsu Weixi Group Co., and Hangzhou Dunli, collectively, the ''Separate Rate Applicants'') demonstrated their eligibility for, and were hence assigned, separate-rate status. No party has commented on the eligibility of these companies for separate rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate rate status. Normally, the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. *See* section 735(c)(5)(A) of the Act.

In the *Preliminary Determination,* the Department assigned to the Separate Rate Applicants' exporter/producer combinations that qualified for a separate rate a weighted-average margin based on the experience of the mandatory respondents, excluding any *de minimis* or zero rates or rates based on total AFA. *See Preliminary Determination.* For the final determination, we are granting Wireking a separate rate based on information that was verified.[6] The Department is basing this rate for Wireking on total AFA.[7] Therefore, the Department will assign New King Shan's calculated rate as the separate rate for the Separate Rate Applicants' exporter/producer combinations. *See* section 735(c)(5)(A) of the Act.

The PRC-Wide Rate

In the *Preliminary Determination,* the Department found that Asber Enterprise Co., Ltd. (China) and the PRC-wide entity did not respond to our requests for information. In the *Preliminary Determination* we treated PRC exporters/producers that did not respond to the Department's request for information as part of the PRC-wide entity because they did not demonstrate that they operate free of government control. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination.* The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000). *See also,* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (''SAA''). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from New King Shan, Wireking, Marmon Retail Services Asia, Hangzhou Dunli, and Jiangsu Weixi Group Co., which are listed in the ''Final Determination Margins'' section below.

Corroboration

At the *Preliminary Determination,* in accordance with section 776(c) of the Act, we based the adverse facts available (''AFA'') rate on margins from the petition,[8] and corroborated it using information submitted by certain respondents. Petitioners' methodology for calculating the export price (''EP'') and NV in the petition is discussed in the initiation notice. *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 50596, 50598–99 (August 27, 2008) (''*Initiation Notice''*). In the final determination, only one mandatory respondent, New King Shan Co, received an individually calculated weighted-average margin. Thus, the Department had limited information from which to corroborate the selected AFA rate. To assess the probative value of the total AFA rate selected for the PRC-wide entity and the total AFA rate chosen for the other mandatory respondent, Wireking, we compared the transaction-specific rates calculated for New King Shan to the margins contained in the petition. The Department concludes that by using New King Shan's highest transaction specific margin as a limited reference point, the highest petition margin that can be corroborated is 95.99 percent. Furthermore, we find that the rate of 95.99 percent is corroborated within the meaning of section 776(c) of the Act. *See* Memorandum to the File: Corroboration of the PRC-Wide Facts Available Rate and Wireking's AFA Rate for the Final Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (July 20, 2009) (''Final Corroboration Memo''). Thus, we determine that 95.99 percent is the single AFA antidumping rate for the

[6] Wireking Verification Report.

[7] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Issues and Decision Memorandum for the Final Determination (July 20, 2009) (''Issues and Decision Memorandum'').

[8] *See* Petition, at Volume II, Exhibit 14.

PRC-wide entity, and that 95.99 percent is also the single AFA antidumping duty rate for Wireking for this final determination.

Combination Rate

In its *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice.* Therefore, for the final determination, we have assigned a combination rate to respondents that are eligible for a separate rate.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Exporter	Producer	WA margin
Guangdong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.).	Guangdong Wireking Housewares & Hardware Co., Ltd	95.99
New King Shan (Zhu Hai) Co., Ltd	New King Shan (Zhu Hai) Co., Ltd	44.77
Marmon Retail Services Asia	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia).	44.77
Hangzhou Dunli Import & Export Co., Ltd	Hangzhou Dunli Industry Co., Ltd	44.77
Jiangsu Weixi Group Co	Jiangsu Weixi Group Co	44.77
PRC-wide Entity (including Asber Enterprise Co., Ltd. (China))		95.99

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after March 5, 2009, the date of publication of the *Preliminary Determination.* CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject certain kitchen appliance shelving and racks from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from Wireking, New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co., and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond for all entries of certain kitchen appliance shelving and racks from the People's Republic of China.

Additionally, the Department has continued to find in its *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* (July 20, 2009) (''*CVD Final*'') that the products under investigation, exported and produced by Wireking, benefitted from an export subsidy. The following export subsidies were determined in the *CVD Final:* Income Tax reduction for Export Oriented FIEs; countervailable subsidy of 0.94 percent; and Local Income Tax Reduction for ''Productive'' FIEs: Countervailable subsidy of 0.23 percent. In the *CVD Final,* Wireking's rate was assigned to the All-Others rate as it was the only rate that was not zero, *de minimis* or based on total facts available. Accordingly, as the countervailing duty rate for New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., and Jiangsu Weixi Group Co. is the All-Others rate, which includes two countervailable export subsidies, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above for these companies adjusted for the countervailing duties imposed to offset export subsidies determined in the *CVD Final.* The adjusted cash deposit rate for New King Shan is 43.60 percent and, as the antidumping duty cash deposit rate assigned to the separate rate companies is New King Shan's rate, the adjusted cash deposit rate for Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., and Jiangsu Weixi Group Co. also is 43.60 percent.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 20, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Changes From the Preliminary Determination

General Issues

Comment 1: Double Remedy: Antidumping Duties and CVD Duties
Comment 2: New King Shan's Antidumping Duty Margin
Comment 3: Filing Issues Concerning Petitioners' Submissions
Comment 4: Rejection of New King Shan's Minor Corrections
Comment 5: Rejection of New Information in New King Shan's Surrogate Value Rebuttal Submission

Surrogate Values

Comment 6: Wire Rod
Comment 7: Hydrochloric Acid
Comment 8: Sodium Triphosphate
Comment 9: Nickel Anode

Surrogate Financial Ratios

Comment 10: Surrogate Financial Companies
Comment 11: Treatment of Gratuity Benefits
Comment 12: Treatment of Commissions
Comment 13: Treatment of Advertising
Comment 14: Treatment of Job Work Charges
Comment 15: Treatment of Labor Expenses

Company-Specific Issues

Comment 16: Wireking
- A. Total Adverse Facts Available (''AFA'') for Wireking
- B. Partial AFA for Factors of Production (''FOPs'')
- C. Partial AFA for Labor
- D. Partial AFA for Underreported Weight-per-Piece FOPs
- E. Partial AFA for Yield Loss
- F. Partial AFA for Market Economy Movement Expenses
- G. Facts Available (''FA'') for PVC Buffer
- H. Water
- I. Unreported U.S. Sales
- J. Distance from Factory to Port
- K. Name Correction

Comment 17: New King Shan
- A. Total AFA for New King Shan
- B. Partial AFA for FOPs
- C. Yield Loss and Steel Scrap
- D. Allocation of Stainless Steel and Steel Plate Products
- E. Date of Sale
- F. Verification of Quantity and Value of U.S. Sales
- G. Interest Rate for Sale Expenses
- H. U.S. Warehousing
- I. U.S. Indirect Selling Expenses
- J. Credit Expenses
- K. U.S. Customs Duty
- L. Reporting of Ocean Freight
- M. Affiliate's Market Economy (''ME'') Purchases
- N. Period for Credit Expenses

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting the second administrative review of the antidumping duty order on certain lined paper products (''CLPP'') from the People's Republic of China (''PRC'') with respect to two companies: the Watanabe Group, which consists of Watanabe Paper Products (''Shanghai'') Co., Ltd., Watanabe Paper Products (''Lingqing'') Co., Ltd., and Hotrock Stationery (''Shenzhen'') Co., Ltd. (collectively, ''the Watanabe Group'') and Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li''). The period of review (''POR'') is September 1, 2007, through August 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 73 FR 64305 (October 29, 2008) (*''Notice of Initiation''*). On June 4, 2009, the Department published its intent to rescind this administrative review in part with respect to Lian Li. *See Certain Lined Paper Products From the People's Republic of China: Notice of Intent to Rescind, In Part, Antidumping Duty Administrative Review and Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 26840 (June 4, 2009) (*''Notice of Intent to Rescind and Prelim Extension''*). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

DATES: *Effective Date:* July 24, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** an antidumping duty order on CLPP from the PRC.[1] On September 2, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CLPP from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 73 FR 51272 (September 2, 2008). On September 30, 2008, the Association of American School Paper Suppliers, a domestic interested party and the petitioner in the underlying investigation (''Petitioner''), requested that the Department conduct an administrative review of the Watanabe Group and Lian Li.

On October 29, 2008, the Department initiated this review with respect to both requested companies. *See Notice of Initiation.* On November 13, 2008, Lian Li submitted a letter certifying that it did not have any shipments of subject merchandise during the POR. On January 29, 2009, Lian Li submitted product samples of the merchandise it exported to the United States during the POR, which Lian Li claimed were non-subject merchandise. On March 4, 2009, counsel for petitioner inspected Lian Li's product samples. *See* Memorandum to the File from Joy Zhang titled ''Inspecting the Product Samples by Counsel for the Association of American School Paper Supplies,'' dated March 4, 2009.

On June 4, 2009, the Department published a notice extending the deadline for the preliminary results for 120 days to September 30, 2009. In this notice the Department also published its intent to rescind this administrative review in part with respect to Lian Li. *See Notice of Intent to Rescind and Prelim Extension,* 74 FR 26840 (June 4, 2009).

On December 2, 2008, the Department issued an antidumping questionnaire to the Watanbe Group. On January 8, 2009, the Watanbe Group submitted a letter

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006).

stating that it did not export for consumption in the United States lined paper products subject to the scope of the antidumping order of CLPP during the POR. *See* the Watanabe Group's January 8, 2009, submission at 1. The Department conducted a CBP data query on December 3, 2008. On February 2, 2009, the Department released the results of the Department's internal CBP data query with respect to the Watanabe Group's shipments of subject merchandise to the United States during the POR to the interested parties under the Department's December 18, 2008, administrative protective order (''APO'') in this segment of the proceeding, and requested that the Watanabe Group respond to the Department's antidumping questionnaire. On March 11, 2009, the Department released to the interested parties under APO CBP entry documentation covering the Watanabe Group's shipments, which indicated entries of subject merchandise during the POR for which the Watanabe Group was the producer and/or exporter. On March 18, 2009, the Watanabe Group submitted a letter to the Department, claiming that the shipments in question are either outside the scope of the antidumping order, outside of the POR based on the Department's date of sale methodology, or both, and therefore not subject to the administrative review. *See* the Watanabe Group's March 18, 2009, submission at 3.

In a letter to the Watanabe Group on March 26, 2009, the Department explained that the Department's antidumping questionnaire requires respondents to report sales of subject merchandise entered for consumption during the POR, and that because there were entries of the Watanabe Group's merchandise during the POR, the Watanabe Group is required to fully respond to the Department's antidumping questionnaire. *See* Letter from James Terpstra, Program Manager, AD/CVD, Office 3, Import Administration to the Watanabe Group, dated March 26, 2009. The Watanabe Group submitted a response on April 9, 2009, which only answered three questions of Section C of the Department's multi-faceted antidumping questionnaire with respect to the date of sales, claiming that the Watanabe Group ''is responding to the best of its ability for the relevant parts of the antidumping questionnaire.'' The Watanabe Group reiterated that it did not export subject merchandise to the United States during the POR. *See* the Watanabe Group's April 9, 2009, submission at 2. The Watanabe Group stated that its certification of no sales was based on the date of the invoice for export sales. *Id.* at 2–3.

On April 22, 2009, the Department sent a letter to the Watanabe Group reiterating its request that the Watanabe Group respond fully to the Department's antidumping questionnaire. The letter explained again the authority under which the Department is requiring responses. Namely, section 351.213(e) of the Department's regulations gives the Department flexibility by stating that the review ''will cover, as appropriate, entries, exports, or sales * * *'' Section 751(a)(2)(A) of the Tariff Act of 1930, as amended (''the Act'') provides that where a request for review has been received and a review has been initiated, the Department shall perform a dumping calculation for each entry during the POR. *See* Letter from James Terpstra, Program Manager, AD/CVD, Office 3, Import Administration to the Watanabe Group, dated April 22, 2009, (the Department's April 22, 2009 letter) at 1. The letter instructed that for sales based on export price (''EP''), if the Watanabe Group did not know the entry dates, the Watanabe Group should report each transaction involving merchandise sold and/or shipped during the period June 1, 2007, through August 31, 2008. *Id.* at 2. The letter further advised the Watanabe Group that information submitted after the deadline may result in the use of facts available pursuant to section 776(c) of the Act. On May 1, 2009, the Watanabe Group requested an extension of time to respond to the Department's questionnaire. *See* the Watanabe Group's May 1, 2009, submission at 1. On May 5, 2009, the Department granted the Watanabe Group's request in full; specifically, an extension until May 20, 2009, to file its Section A response and an extension until June 3, 2009, to file its Sections C and D response.

On May 20, 2009, counsel for the Watanabe Group informed the Department that the Watanabe Group had decided that it would not submit a response to the Department's questionnaire. *See* Memorandum to the File from James Terpstra titled ''Watanabe Telephone Call,'' dated June 1, 2009. On June 3, 2009, the Watanabe Group notified the Department in writing that it was not responding to Sections A, C and D of the antidumping questionnaire because it had explained and certified on the record that it did not sell subject merchandise for export to the United States during the POR based on its understanding of the term ''sales'' as defined under the antidumping law. *See* the Watanabe Group's June 3, 2009, submission at 2.

On June 10, 2009, Petitioner filed comments on the Watanabe Group's June 3, 2009, letter, urging the Department to respond to the Watanabe Group's failure to cooperate by expediting the preliminary results and base the Watanabe Group's margin on adverse facts available (''AFA''). On June 10, 2009, Petitioner also filed a letter requesting that the Department expedite the preliminary and final results for this administrative review. Petitioner stated that the Department extended the period of time for completion of the preliminary results of this review until no later than September 30, 2009, to accommodate the Watanabe Group's extension request and to permit sufficient time to analyze its forthcoming response. *See Notice of Intent to Rescind and Prelim Extension.* Petitioner contends that because the Watanabe Group has affirmatively stated that it would not respond to the questionnaire, the Department should immediately issue a preliminary determination based on adverse inferences.

Period of Review

The POR covered by this review is September 1, 2007, through August 31, 2008.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using

any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: Pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- *Fly™ lined paper products:* A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *Zwipes™:* A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *FiveStar® Advance™:* A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope). Merchandise subject to this order is typically imported under headings 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, 4810.22.5044, 4811.90.9090, 4820.10.2010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Separate Rates

In the *Notice of Initiation,* the Department notified parties of its policy on separate-rate eligibility in proceedings involving non-market

economy (NME) countries. *See Notice of Initiation.*

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both de jure and de facto governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. It is the Department's practice to require a party to submit evidence that it operates independently of the State-controlled entity in each segment of a proceeding in which it requests separate rate status. The process requires exporters to submit a separate-rate status application. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007), *Peer Bearing Co. Changshan* v. *United States,* 587 F.Supp. 2d 1319, 1324–25 (CIT 2008) (affirming the Department's determination in that review). The Watanabe Group, which was selected as a mandatory respondent, did not respond to the Department's request for a separate rate certification on the record of this review, nor did it respond to the Department's questionnaire. Thus, the Watanabe Group has not demonstrated that it operates free from government control. Thus, we find that for purposes of this review, the Watanabe Group is part of the PRC-wide entity.

Use of Adverse Facts Available

Section 776(a) of the Act provides that, the Department shall apply ''facts otherwise available'' if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action, reprinted in H.R. Doc. No. 103–216, at 870 (1994) (''*SAA*''). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

Application of Total Adverse Facts Available

The Watanabe Group

As discussed above, the Watanabe Group submitted an incomplete response to the Department's original questionnaire, claiming it did not sell subject merchandise to the United States during the POR, and therefore, it would not respond additionally to Sections A, C and D of the Department's questionnaire. *See* the Watanabe Group's June 3, 2009, submission at 1. As noted above, the Department explained in its March 26, and April 22, 2009, letters the scope of the review and the Department's legal authority to require responses covering entries during the POR. In response to the Watanabe Group's request, the Department extended its deadline for the Watanabe Group's response. However, the Watanabe Group reported to the Department that it did not intend to submit additional responses.

By failing to respond to the Department's requests for information, the Watanabe Group has not demonstrated its eligibility for a separate rate; *i.e.,* the Watanabe Group has not proven it is free from the government control. Therefore, the Watanabe Group is considered part of the PRC-wide entity. Additionally, because the Watanabe Group is now part of the PRC-wide entity, the PRC-wide entity is now under review.

The PRC-Wide Entity

As explained above, the PRC-wide entity, which includes the Watanabe Group, withheld necessary information by failing to supply the requested information on its shipments of subject merchandise to the United States in a timely manner. Therefore, it is appropriate to apply a dumping margin for the PRC-wide entity using facts available on the record. *See* section 776(a) of the Act. In addition, because the PRC-wide entity failed to cooperate to the best of its ability, we find that an adverse inference is appropriate. *See* section 776(b) of the Act.

Selection of Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 4913 (January 28, 2009)). Further, it is the Department's practice to select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870; *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005).

Generally, the Department finds that selecting the highest rate from any segment of the proceeding as AFA is appropriate. *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 70 FR 76755, 76761 (December 28, 2005). The CIT and the Court of Appeals for the Federal Circuit (''Federal Circuit'') have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions. *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding the application of an AFA rate which was the highest available dumping margin from a different respondent in an investigation); *see also Kompass Food Trading Int'l* v. *United States,* 24 CIT 678, 689 (July 31, 2000) (upholding the application of an AFA rate which was the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States,* 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding the application of an AFA rate which was the highest available dumping margin from a different respondent in a previous administrative review).

As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 258.21 percent, from the investigation of CLPP from the PRC, which is the highest rate on the record of all segments of this proceeding. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006). As explained below, this rate has been corroborated.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. *See SAA* at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final determination), *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 62 FR 11825 (March 13, 1997). Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627 (June 16, 2003) (unchanged in final determination) *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183–84 (March 11, 2005).

The AFA rate selected here is from the investigation. This rate was calculated based on information contained in the petition, which was corroborated for the final determination. No additional information has been presented in the current review which calls into question the reliability of the information. Therefore, the Department finds that the information continues to be reliable.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period September 1, 2007, through August 31, 2008:

Producer/manufacturer	Weighted-average margin
PRC-Wide Rate (which includes the Watanabe Group)	258.21%

Disclosure

The Department will disclose these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are

requested to provide their case brief and rebuttal briefs in electronic format (*e.g.,* Microsoft Word, pdf, *etc.*). Interested parties, who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to liquidate the Watanabe Group's appropriate entries at the PRC-wide rate of 258.21 percent.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of CLPP from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (2) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 258.21 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: July 20, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–17716 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Opportunity To Apply for Membership on the U.S. Travel and Tourism Advisory Board.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the U.S. Travel and Tourism Advisory Board (Board). The purpose of the Board is to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

ADDRESSES: Please submit application information to J. Marc Chittum, Office of Advisory Committees, U.S. Travel and Tourism Advisory Board Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

DATES: All applications must be received by the Office of Advisory Committees by close of business on August 20, 2009.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–4501, e-mail: *Marc.Chittum@mail.doc.gov*.

SUPPLEMENTARY INFORMATION: The Office of Advisory Committees is accepting applications for Board members for the upcoming two-year charter term beginning September 2009. Members shall serve until the Board's charter expires on September 20, 2011.

Members will be selected, in accordance with applicable Department of Commerce guidelines, based on their ability to advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industries, to act as a liaison among the stakeholders represented by the membership and to provide a forum for those stakeholders on current and emerging issues in the travel and tourism industry. Members of the Board shall be selected in a manner that ensures that the Board is balanced in terms of points of view, industry sector or subsector, range of products and services, demographics, geographic locations, and company size. Additional factors which may be considered in the selection of Board members include candidates' proven experience in promoting, developing, and implementing advertising and marketing programs for travel-related or tourism-related industries; or the candidates' proven abilities to manage tourism-related or other service-related organizations.

Each Board member shall serve as the representative of a U.S. entity or U.S. organization in the travel and tourism sector. For the purposes of eligibility, a U.S. entity shall be defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities. For the purposes of eligibility, a U.S. organization shall be defined as an organization, including a trade association or government unit or body, established under the laws of the United States that is controlled by U.S. citizens or by another U.S. organization or entity, as determined based on board of directors (or comparable governing body), membership, and revenue sources.

Priority may be given to a Chief Executive Officer or President (or comparable level of responsibility) of a U.S. organization or U.S. entity in the travel and tourism sector. Priority may also be given to individuals with international tourism marketing experience.

Officers or employees of state and regional tourism marketing entities are eligible for consideration for Board membership as representatives of U.S. organizations. A state and regional tourism marketing entity may include, but is not limited to, state government

tourism offices, state and/or local government supported tourism marketing entities, or multi-state tourism marketing entities. Again, priority may be given to a Chief Executive Officer or President (or comparable level of responsibility) of a state and regional tourism marketing entity.

Members will serve at the discretion of the Secretary of Commerce. Board members shall serve in a representative capacity, representing the views and interests of their particular business sector or subsector. Board members are not special government employees and will receive no compensation for their participation in Board activities. Members participating in Board meetings and events will be responsible for their travel, living and other personal expenses. Meetings will be held regularly and not less than twice annually, usually in Washington, DC Members are required to attend a majority of the Board's meetings. The first Board meeting for the new charter term has not yet been set.

To be considered for membership, please provide the following:

1. Name and title of the individual requesting consideration.
2. A sponsor letter from the applicant on his or her organization/entity letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Board. This sponsor letter should also address the applicant's travel and tourism-related experience.
3. The applicant's personal resume.
4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.
5. If the applicant represents a state or regional tourism marketing entity, the functions and responsibilities of the entity.
6. If the applicant represents an organization, information regarding the control of the organization, including the governing structure, members, and revenue sources as appropriate signifying compliance with the criteria set forth above.
7. If the applicant represents a company, information regarding the control of the company, including the governing structure and stock holdings as appropriate signifying compliance with the criteria set forth above.
8. The entity's or organization's size and ownership, product or service line and major markets in which the entity or organization operates.

Appointments of members to the Board will be made by the Secretary of Commerce.

Dated: July 21, 2009.

J. Marc Chittum,

Executive Secretary, U.S. Travel and Tourism Advisory Board.

[FR Doc. E9–17715 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP58

Endangered Species; File No. 10027–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that Center for Biodiversity and Conservation, American Museum of Natural History has been issued a modification to scientific research Permit No. 10027–01.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 16, 2009, notice was published in the **Federal Register** (74 FR 17633) that a modification of Permit No. 10027 had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The modification increases satellite tag attachment takes from 12 to 16 green (*Chelonia mydas*) sea turtles per year, with a maximum of 25 turtles over the course of the study; increases acoustic tag takes from 15 to 30 green sea turtles per year, with a maximum of 60 acoustic tags over the course of the study; increases skin sampling, blood sampling, flipper and passive integrated transponder tagging and marking takes from 60 to 100 green sea turtles per year, with a maximum of 350 turtles skin and blood sampled over the course of the study; and increases gastric lavage takes from 20 to 50 green sea turtles per year, with a maximum of 200 turtles lavaged over the course of the study.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 20, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–17722 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO45

Marine Mammals; File No. 14241

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dr. Peter Tyack, Woods Hole Oceanographic Institution, Woods Hole, MA has been issued a permit to conduct research on marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 8, 2009, notice was published in the **Federal Register** (74 FR 15940) that a request for a permit to conduct research on cetacean behavior, sound production, and responses to sound had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The research methods include tagging marine mammals with an advanced digital sound recording tag that records the acoustic stimuli an animal hears and measures vocalization, behavior, and physiological parameters. Research also involves conducting sound playbacks in a carefully controlled manner and measuring animals' responses. The principal study species are beaked whales, especially Cuvier's beaked whale (*Ziphius cavirostris*), and large delphinids such as long-finned pilot whales (*Globicephala melas*), although other small cetacean species may also be studied. The locations for the field work are the Mediterranean Sea, waters off of the mid-Atlantic United States, and Cape Cod Bay. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 20, 2009.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–17721 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ42

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held August 11–13, 2009.

ADDRESSES: The meetings will be held at the Perdido Beach Resort, 27200 Perdido Beach Blvd., Orange Beach, AL 36561.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Thursday, August 13, 2009

8:30 a.m. - The Council meeting will begin with swearing in of the new council members, a review of the agenda and minutes.

8:50 a.m. - 12 p.m. - The Council will receive public testimony on exempted fishing permits (EFPs), if any; Final SAFMC Comprehensive Ecosystem-Based Amendment 1; Final Action on Reef Fish Amendment 31, and the Council will hold an open public comment period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

1:30 p.m. - 2 p.m. - The Council will receive a report on the Gulf of Mexico Alliance activities.

2 p.m. - 5:30 p.m. - The Council will review and discuss reports from the committee meetings as follows: Reef Fish Management; Advisory Panel Selection; Scientific and Statistical Committee Selection; Budget/Personnel; Spiny Lobster Management; Sustainable Fisheries/Ecosystem; Highly Migratory Species; and Data Collection.

5:30 p.m. - 6 p.m. - The Council will review and potentially revise the proposed SEDAR schedule.

6 p.m. - 6:15 p.m. - Other Business items will follow.

6:15 p.m. - 6:30 p.m. - Election of Chairman and Vice Chairman will follow.

The Council will conclude its meeting at approximately 6:30 p.m.

Committees

Tuesday, August 11, 2009

9 a.m. - 11 a.m. - Orientation Session for New Council Members.

12:30 p.m. - 2 p.m. - CLOSED SESSION - The Advisory Panel Selection Committee will consider appointment of members to an Ad Hoc Limited Access Privilege Program.

2 p.m. - 2:30 p.m. - CLOSED SESSION - The Scientific and Statistical Committee Selection Committee will consider appointment of an economist to the SEP.

2:30 p.m. - 5:30 p.m. - The Reef Fish Management Committee will meet to discuss final action on Reef Fish Amendment 31/DEIS to address longline/turtle interactions.

Wednesday, August 12, 2009

8:30 a.m. - 12 p.m. - The Reef Fish Management Committee will meet to receive presentations on ''Is There a Better Way to Manage US Shared Commercial and Recreational Fisheries?'' and '' Evolving Approaches to Managing Marine Recreational Fisheries''. They will also discuss preliminary analysis of gag and red grouper management measures.

2 p.m. - 3 p.m. - The Sustainable Fisheries/Ecosystem Committee will discuss the Scoping Document for Generic ACL/AM Amendment; Final SAFMC Comprehensive Ecosystem-Based Amendment 1, and receive a report on Catch Shares Task Force.

3 p.m. - 3:30 p.m. - The Spiny Lobster Committee will discuss the Scoping Document for Spiny Lobster Amendment 9.

3:30 p.m. - 4:30 p.m. - The Budget/Personnel Committee will review the 5-year Budget Proposal.

4:30 p.m. - 5 p.m. - The Highly Migratory Species Committee will listen to a presentation on Amendment 3 to Consolidated Highly Migratory Species FMP.

5 p.m. - 5:30 p.m. - The Data Collection Committee will listen to a presentation on Louisiana For-Hire Logbook Program.

6 p.m. - 7 p.m. - There will be an informal open public question and answer session.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Steven Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and

completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 21, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17653 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ47

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, August 10, 2009 at 1 p.m. and Tuesday, August 11, 2009 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732–6000; fax: (401) 739–5715.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Monday, August 10, 2009

The Scientific and Statistical Committee (SSC) will review the Groundfish Plan Development Team calculations of Acceptable Biological Catch (ABCs) for groundfish stocks for the years 2010–12 using the guidance previously provided by the SSC; finalize the ABC recommendations; discuss upcoming meetings including the Ecosystem Based Fisheries Management Workshop, the September 2009 Council meeting, the National SSC Workshop, SAW/SARC terms of reference and committee timelines.

Tuesday, August 11, 2009

The Committee will review the 2009 Herring TRAC Assessment results for the Atlantic herring complex and provide preliminary guidance to the Herring PDT regarding approaches to account for scientific uncertainty, specifying ABC and developing an ABC control rule; review quantitative analyses of uncertainty associated with the Overfishing Level and finalize a scallop ABC recommendation for fishing year 2010; review the 2008 Data Poor Working Group assessment results for red crab and provide preliminary guidance to the Red Crab Plan Development Team regarding approaches for accounting and scientific uncertainty, specifying ABC and developing an ABC control rule.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17657 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ45

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's Rural Community Outreach Committee will meet in Anchorage.

DATES: The meeting will be held on August 12, 2009, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Chamber of Commerce Conference Room, Room ı304, 1016 West 6th Avenue, Suite 304, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, NPFMC, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Council's Rural Community Outreach Committee will discuss organizational issues; ways to improve general and project-specific outreach with rural and Alaska Native communities; and the committee's role in providing feedback on community impacts sections of analyses.

The Agenda is subject to change, and the latest version will be posted at *http://www.noaafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 21, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17656 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ44

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting of the South Atlantic Fishery Management Council's Law Enforcement Advisory Panel (AP).

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Law Enforcement Advisory Panel in North Charleston, SC.

DATES: The meeting will take place August 12–13, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC; telephone: (843) 308–9330.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Law Enforcement Advisory Panel will meet from 1:30 p.m. - 5 p.m. on August 12, 2009, and from 8:30 a.m. until 4 p.m. on August 13, 2009.

The Advisory Panel will receive updates from state and federal representatives regarding law enforcement activities and discuss issues relative to the Joint Enforcement Agreement (JEA) and current enforcement activities for the marine protected areas implemented in Amendment 14 to the Snapper Grouper Fishery Management Plan (FMP) for the South Atlantic. The AP will also receive updates on Vessel Monitoring Systems (VMS) programs in the Southeast Region and new location technology.

AP members will receive an update on Amendment 17A to the Snapper Grouper FMP and develop recommendations relative to proposed area closures, including the number and location of waypoints, transit provisions, definitions of gear stowed, and other issues. The AP will receive an update on Amendment 17B to the Snapper Grouper FMP and develop recommendations relative to the prohibition of harvest of deepwater snapper grouper species beyond 240 feet, including how to define the depth contour line including the number and location of waypoints, transit provisions, definition of gear stowed, and other issues.

The AP will review Amendment 18 to the Snapper Grouper FMP, including a provision to expand the snapper grouper management unit northward, and Amendment 20 to the Snapper Grouper FMP involving revisions of the existing Wreckfish Individual Transferable Quota (ITQ) Program, and provide recommendations. AP members will receive an update on the status of proposed Limited Access Privilege Programs (Catch Share Programs), and the Council's Ecosystem-Based Amendment 2 and provide recommendations as appropriate.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Note: The times and sequence specified in this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. equests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Dated: July 21, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17655 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ43

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting of the South Atlantic Fishery Management Council's (Council) Habitat and Environmental Protection (Habitat) Advisory Panel (AP).

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Habitat Advisory Panel in North Charleston, SC.

DATES: The meeting will take place August 11–12, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times..

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC; telephone: (843) 308–9330.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Habitat Advisory Panel will meet from 8:30 a.m. - 5 p.m. on August 11, 2009, and from 8:30 a.m. until 12 noon on August 12, 2009.

The Advisory Panel will receive updates relative to the coordination of ecosystem-related activities including NOAA Fisheries' Habitat Conservation Program, Ocean Observing Systems including Southeast Coastal Ocean Observing Regional Association (SECOORA) and the U.S. Integrated Ocean Observing System (IOOS), Navy activities in the South Atlantic Region, U.S. Fish and Wildlife Service's Strategic Habitat Conservation, and the South Atlantic Governor's Alliance. The AP will also receive updates on regional ecosystem research including the Council's Internet Mapping Server (IMS) and developing research server, Fishery Independent Research programs, National Marine Sanctuary Program, South Atlantic Research Project (SARRP), development of Aquatic Living Resources Indicators for the

Albemarle-Pamlico National Estuary Program (APNEP) and NOAA Fisheries' Beaufort, NC lab research activities.

The AP will review the Council's draft Comprehensive Ecosystem-Based Amendment 2 and provide recommendations as appropriate.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Note: The times and sequence specified in this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Dated: July 21, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17654 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Third Smart Grid Interoperability Standards Interim Roadmap Public Workshop

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Institute of Standards and Technology announces that a free two-day public workshop on Smart Grid interoperability standards will be held on August 3–4, 2009, in the Washington, DC area. Space is limited to about 300 people. Registration will be on a first come, first served basis. Opening and closing plenary sessions will be Webcast, and the breakout sessions will be teleconferenced. Information on how to view the Webcasts and join the teleconferences will be posted in advance on the NIST smart grid Web site at: *http://www.nist.gov/smartgrid/*.

DATES: The free public workshop will be held on August 3 and 4, 2009, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The free public workshop will be held at: Westfields Marriott Washington Dulles, 14750 Conference Center Drive, Chantilly, Virginia 20151, (*http://www.marriott.com/hotels/travel/iadwf-westfields-marriott-washington-dulles/*).

Persons interested in attending may register at: *http://guest.cvent.com/i.aspx?4W,M3,8954df11-b743-4b4b-9487-3d71b252286d,* or by calling Ashley Eldrege of the Electric Power Research Institute, at 650–855–2063.

FOR FURTHER INFORMATION CONTACT: Zulma Lainez at 301–975–2232 or by e-mail at *smartgrid@nist.gov*. Registration information will be posted at: *http://www.nist.gov/smartgrid/* and at *http://guest.cvent.com/EVENTS/Calendar/Calendar.aspx?cal=22e6c583-7b72-4ba0-9898-598e801ee421*.

SUPPLEMENTARY INFORMATION: Under the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110–140), the National Institute of Standards and Technology (NIST) has ''*primary responsibility to coordinate development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems * * **''' (EISA, Section 1305]

In 2008, responding to this congressional mandate, NIST initiated a government/industry effort to develop an Interoperability Framework and to engage the many Smart Grid stakeholders in a coordinated approach to identify or develop needed standards. This coordinated effort was designed and initiated in full collaboration with the Department of Energy. In early 2009, responding to President Obama's energy-related national priorities, NIST intensified and expedited efforts to accelerate progress toward identification of Smart Grid standards.

NIST will submit standards that are identified or developed through this process to the Federal Energy Regulatory Commission (FERC). Once FERC determines that there is sufficient consensus, EISA instructs FERC to institute a rulemaking proceeding to adopt the standards and protocols that may be necessary to ensure that there is Smart Grid functionality and interoperability in interstate transmission of electric power, and in regional and wholesale electricity markets.

A key objective of the workshop is to engage Standards Development Organizations (SDOs) in addressing standards-related priorities, efficiently and expeditiously. Plenary and break-out sessions will be devoted to discussing individual SDO perspectives on the evolving roadmap for Smart Grid interoperability standards; identifying individual and collaborative responsibilities of SDOs to address and resolve standards issues and gaps, and develop plans and set timelines for the meeting these responsibilities.

NIST recently posted the *Report to NIST on the Smart Grid Interoperability Standards Roadmap* for public comment until July 30. This report, prepared by the Electric Power Research Institute (EPRI) under contract to NIST, can be found on the NIST Smart Grid Interoperability Standards Project (*http://nist.gov/smartgrid/*). A recorded Webcast that describes the Report can be found at *http://intelligrid.epri.com*. (Click on: Briefing on the EPRI report to NIST on Smart Grid Interoperability Standards Roadmap for the NIST DEWGs.)

On the basis of its review of this report, and other information, NIST has identified high-priority areas that it is proposing for immediate, focused action by SDOs and stakeholder groups.

Additional Information. More information is available on the NIST Smart Grid project Web site at: *http://www.nist.gov/smartgrid/*. To help it fulfill its mandate to facilitate Smart Grid standards interoperability, NIST also manages a Smart Grid collaboration Web site at: *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/WebHome*. NIST recently exercised the option to extend an existing contract with the Electric Power Research Institute (EPRI) to perform services related to NIST's effort to coordinate development of Smart Grid standards. The contract requires EPRI to help NIST organize and facilitate workshops at which stakeholders will present, review, develop, and work to towards consensus on roadmap content, and to use its technical expertise to compile, distill, and organize stakeholder contributions. This notice announces the third workshop organized by EPRI. All EPRI outputs under the contract are subject to NIST review and approval and are owned by NIST.

Dated: July 21, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–17720 Filed 7–23–09; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions From Procurement List.

SUMMARY: This action adds to the Procurement List product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

DATES: *Effective Date:* August 24, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 5/29/2009 (74 FR 25717–25718), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7520–00–NIB–1808—File, Wall Hanging, Clear.
Coverage: B-List for the broad Government requirement as aggregated by the General Services Administration.
NSN: 7520–00–NIB–1809—File, Wall Hanging, Smoke
NSN: 7520–00–NIB–1810—File, Wall Hanging, Clear
NSN: 7520–00–NIB–1811—File, Wall Hanging, Smoke
Coverage: A-List for the total Government requirement as aggregated by the General Services Administration.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, TX.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Services

Service Type/Location: Custodial Services, USDA—Forest Service—Midewin National Tallgrass Prairie, 30239 South State Route 53, Wilmington, IL.
NPA: United Cerebral Palsy of the Land of Lincoln, Springfield, IL.
Contracting Activity: Forest Service, Midewin National Tallgrass Prairie, Wilmington, IL.
Service Type/Location: Grounds Maintenance Service, Grounds Maintenance, Caribbean National Forest, Rio Grand, PR, El Yunque, Rio Grand, PR.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: Forest Service, Southern Regional Office, Atlanta, GA.

Deletions

On 5/8/2009 (74 FR 21661–21662) and 6/5/2009 (74 FR 27022–27023), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

Pad, Floor Polishing Machine

NSN: 7910–01–513–2664—13″ Beige Buff
NSN: 7910–01–513–2668—14″ Beige Buff
NSN: 7910–01–513–2672—15″ Beige Buff
NSN: 7910–01–513–2674—16″ Beige Buff
NSN: 7910–01–513–4303—17″ Beige Buff
NSN: 7910–01–513–2675—18″ Beige Buff
NSN: 7910–01–513–2680—19″ Beige Buff
NSN: 7910–01–513–2685—20″ Beige Buff
NSN: 7910–01–513–2677—21″ Beige Buff
NSN: 7910–01–513–2662—22″ Beige Buff
NSN: 7910–01–513–2661—27″ Beige Buff
NPA: Beacon Lighthouse, Inc., Wichita Falls, TX
Contracting Activity: NAC, Veteran Affairs, Hines, IL
NSN: 7530–01–450–5409—Appointment Book Refill, 2005
NSN: 7530–01–517–5964—DAYMAX System, Desert, Camouflage Planner 2005
NSN: 7530–01–517–5964L—DAYMAX System, Desert, Camouflage Planner 2005
NSN: 7530–01–502–6815L—DAYMAX System, DOD Planner w/Logo, 2005
NSN: 7530–01–502–6815—DAYMAX System, DOD Planner, 2005
NSN: 7530–01–502–6812—DAYMAX System, GLE, 2005, Black
NSN: 7530–01–502–6812L—DAYMAX System, GLE, 2005, Black w/Logo
NSN: 7530–01–502–6813—DAYMAX System, GLE, 2005, Burgundy
NSN: 7530–01–502–6813L—DAYMAX System, GLE, 2005, Burgundy w/Logo
NSN: 7530–01–502–6814—DAYMAX System, GLE, 2005, Navy
NSN: 7530–01–502–6814L—DAYMAX System, GLE, 2005, Navy w/Logo
NSN: 7530–01–502–6810—DAYMAX System, IE, 2005, Black
NSN: 7530–01–502–6810L—DAYMAX System, IE, 2005, Black w/Logo
NSN: 7530–01–502–6811—DAYMAX System, IE, 2005, Burgundy
NSN: 7530–01–502–6811L—DAYMAX System, IE, 2005, Burgundy w/Logo
NSN: 7530–01–502–6806—DAYMAX System, IE, 2005, Navy
NSN: 7530–01–502–6806L—DAYMAX System, IE, 2005, Navy w/Logo
NSN: 7530–01–502–6822—DAYMAX

System, JR Version, 2005, Black
NSN: 7530–01–502–6822L—DAYMAX System, JR Version, 2005, Black w/Logo
NSN: 7530–01–502–6821—DAYMAX System, JR Version, 2005, Burgundy
NSN: 7530–01–502–6823—DAYMAX System, JR Version, 2005, Navy
NSN: 7530–01–502–6823L—DAYMAX System, JR Version, 2005, Navy w/Logo
NSN: 7530–01–502–6809—DAYMAX System, LE, 2005, Black
NSN: 7530–01–502–6809L—DAYMAX System, LE, 2005, Black w/Logo
NSN: 7530–01–502–6807—DAYMAX System, LE, 2005, Burgundy
NSN: 7530–01–502–6807L—DAYMAX System, LE, 2005, Burgundy w/Logo
NSN: 7530–01–502–6808—DAYMAX System, LE, 2005, Navy
NSN: 7530–01–502–6808L—DAYMAX System, LE, 2005, Navy w/Logo
NSN: 7530–01–502–6816—DAYMAX System, Woodland Camouflage Planner 2005
NSN: 7510–01–502–7963—DAYMAX, GLE Day at a View, 2005, 7-hole
NSN: 7510–01–502–6819—DAYMAX, GLE Month at a View, 2005, 7-hole
NSN: 7510–01–502–6824—DAYMAX, GLE Week at a View, 2005, 7-hole
NSN: 7510–01–502–6820—DAYMAX, IE/LE Day at a View, 2005, 3-hole
NSN: 7510–01–502–6817—DAYMAX, IE/LE Month at a View, 2005, 3-hole
NSN: 7510–01–502–6818—DAYMAX, IE/LE Week at a View, 2005, 3-hole
NSN: 7510–01–502–7964—DAYMAX, JR, Day at a View, 2005, 6-hole
NSN: 7510–01–502–6828—DAYMAX, Tabbed Monthly, 2005, 3-hole
NSN: 7510–01–502–6829—DAYMAX, Tabbed Monthly, 2005, 7-hole
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY

Service

Service Type/Location: Janitorial/Custodial, Fort Bliss: Main Store Building 1735, AAFES, Main Store—Building 1735, Fort Bliss, TX.
NPA: Goodwill Industries of El Paso, El Paso, TX.
Contracting Activity: Dept of the Army, XR W40M Natl Region Contract OFC, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–17627 Filed 7–23–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0109]

Proposed Collection; Comment Request

AGENCY: DoD, Washington Headquarters Services (WHS), Planning and Evaluation Directorate, Quality Management Division.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the DoD Washington Headquarters Services, Planning and Evaluation Directorate, Quality Management Division announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the DoD WHS Planning and Evaluation Directorate, Quality Management Division, ATTN: Ms. Debra Jahn, 1777 North Kent Street, RPN, Suite 14038, Arlington, VA 22209–2133, or call the DoD WHS Planning and Evaluation Directorate, Quality Management Division at (703) 588–8150.

Title and OMB Number: Interactive Customer Evaluation (ICE) System; OMB Control Number 0704–0420.

Needs and Uses: The Interactive Customer Evaluation System automates and minimizes the use of the current manual paper comment cards and other customer satisfaction collection medium, which exist at various customer service locations throughout the Department of Defense. Members of the public have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. This is a management tool for improving customer services.

Affected Public: Individuals or Households; Business or Other-for-Profit.

Annual Burden Hours: 40,627.

Number of Respondents: 812,540.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Members of the public who respond on the Interactive Customer Evaluation system are authorized customers and have been provided a service through Do customer service organizations. They have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. They also have the opportunity to provide any comments that might be beneficial in improving the process and in turn the service to the customer. This is a management tool for improving customer services.

Dated: June 17, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17644 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0108]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, Defense Logistics Information Service, DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Defense Logistics Agency announces a proposed

public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Information Service, ATTN: Ms. Laura A. Damon, DLIS–LAE, 74 Washington Ave., N., Suite 7, Battle Creek, MI 49037–3084, or call Ms. Laura A. Damon at (269) 961–4262.

Title; Associated Form; and OMB Number: DoD EMALL Web site; OMB Control Number 0704–TBD.

Needs and Uses: Each user of the DoD EMALL Web site must complete registration information in order to get an identification code and password. Members of the public are able to register and log into the DoD EMALL Web site and make purchases.

Affected Public: Not-for-profit institutions; State, local, or Tribal governments.

Annual Burden Hours: 2,500.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Average Burden per Response: .25 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DoD EMALL is an Internet-based Electronic Mall, which allows customers to search for and order items from the government and commercial sources. DoD EMALL is a Department of Defense program operated by the Defense Logistics Information Service (DLIS). All users are required to register and be authenticated and authorized by a DLIS Access Administrator. Access DoD EMALL at: *http://www.dlis.dla.mil/emall.asp*.

Dated: July 17, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17646 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0110]

Proposed Collection; Comment Request

AGENCY: Science, Mathematics, and Research for Transformation (SMART) Scholarship Program, OSD (DDR&E), DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Director, Defense Research and Engineering (DDR&E) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Science Mathematics and Research for Transformation (SMART) Scholarship Program Office, ATTN: Marcus Pritchard, 1 University Circle, Herrmann Hall Rm. 061, Monterey, DC 93943, or call the Deputy Program Manager, Marcus Pritchard, SMART Program Office, at 831–656–2874.

Title; Associated Form; and OMB Number: SMART Information Management System (SIMS); Application Form Number TBD; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to track and maintain accurate records of SMART Program participants, as well as support day-to-day operations and official duties.

Affected Public: Individuals or Households, Federal Government, Not-for-Profit Institutions.

Individuals Who Complete the Application Form

Annual Burden Hours: ~24,000.
Number of Respondents: ~3000.
Responses per Respondent: 1.
Average Burden per Response: 8 hrs.
Frequency: Once annually.

Individuals Who Are Selected for an Award

Annual Burden Hours: ~1,500.
Number of Respondents: ~300.
Responses per Respondent: 5.
Average Burden per Response: 1 hrs.
Frequency: Periodic as needed.

Individuals Who Are Selected for an Award

Annual Burden Hours: ~5,000.

Number of Respondents: ~1,000.
Responses per Respondent: 5.
Average Burden per Response: 1 hrs.
Frequency: Periodic as needed.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are SMART Program participants and their advisors, future employers, and mentors who provide contact, Program progress, and student status information for the purpose of monitoring student participants' progress and position in the SMART Program as part of their agreement as Program participants. All information is collected by direct entry during secure logon sessions and/or by electronic or paper forms collected by SMART Program staff performing official duties. All information sought and collected is requisite to the short- and long-term operations of the Program. All persons must expressly consent to providing the information before they are allowed to provide it.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17645 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Web-Based Mental Health Care Demonstration Project

AGENCY: Department of Defense.

ACTION: Notice of a Web-based TRICARE Assistance Program Demonstration Project.

SUMMARY: This Notice is to advise interested parties of a Military Health System (MHS) demonstration project, under the authority of Title 10, U.S. Code, Section 1092, entitled Web-Based TRICARE Assistance Program. The demonstration project will use existing managed care support contracts (MCSC) to provide a Web-based employee assistance program (EAP) including counseling and advice services to Active Duty Service members, their families members and their dependents enrolled in TRICARE Reserve Select, and those eligible for the Transition Assistance Management Program (TAMP) who reside in the continental United States. We are testing the effectiveness of providing this care.

DATES: *Effective Date:* This demonstration project will be effective August 1, 2009. The demonstration project will continue until April 1, 2010.

ADDRESSES: TRICARE Management Activity (TMA), Health Plan Operations, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: For questions pertaining to this demonstration project, Ms. Kathleen Larkin, (703) 681–0039.

SUPPLEMENTARY INFORMATION:

a. Background

On page 405 of House Report 2638, the Department of Defense Appropriations Act for FY 2009 Joint Explanatory Statement, Congress stated: ''An area of particular interest is the provision of appropriate and accessible counseling to service members and their families who live in locations that are not close to military treatment facilities, other Military Health System facilities, or TRICARE providers. Web-based delivery of counseling has significant potential to offer counseling to personnel who otherwise might not be able to access it. Therefore, the Department is directed to establish and use a Web-based Clinical Mental Health Services Program as a way to deliver critical clinical mental health services to service members and families in rural areas.''

This demonstration is designed to test the effectiveness and efficiency of utilizing audio and visual technologies including Web-based services to provide our Active Duty Service members, their families and other beneficiaries increased access to EAP-like services.

b. Current Status of Access

The Department of Defense currently provides a robust program of nonmedical counseling, as well as mental health care for our Active Duty Service members and their families. The Department offers Military One Source which provides for up to 12 nonmedical face-to-face counseling sessions per issue, per counselor. For those needing medical treatment, we provide behavioral health care in our military treatment facilities or through our TRICARE program.

Our MCSCs currently provide an array of text and multimedia based educational materials targeting pre-deployment, deployment, and post-deployment adjustment concerns. They also have behavioral health (BH) contact centers staffed with beneficiary service representatives and customer service representatives to provide first and second level support, triage, and to make appropriate referrals and locate providers for Active Duty Service members and their families. This demonstration project will expand access to these behavioral health services by using audiovisual telecommunications systems such as video chat/instant messaging to access the BH centers. It also expands access to the Behavioral Health call centers and EAP-like counseling to those enrolled in TRICARE Reserve Select.

c. Demonstration Project Description

The MCSCs' Behavioral Health call center staff will triage those seeking help and refer them to an appropriate level of assistance. This may include Military One Source, a military treatment facility, a network provider for face-to-face care, or for a tele-health visit from an authorized originating site facility to a TRICARE authorized provider's office. In addition, they may perform unlimited assessments and nonmedical counseling or advice using a Web-based platform to ease access for Active Duty Service members, their families, those enrolled in TRICARE Reserve Select, and TAMP-eligibles.

d. Implementation

This demonstration will be effective August 1, 2009.

e. Evaluation

An independent evaluation of the demonstration will be conducted. It will be performed retrospectively and use a combination of administrative and workload measures of behavioral health care access to provide analyses and comment on the effectiveness of the demonstration in meeting its goal of improving beneficiary access to behavioral health care by incorporating Web-based technology.

Dated: July 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17652 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0019]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department

of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the USACE Directorate of Civil works, Institute for Water Resources, 7701 Telegraph Road/Casey Building, Alexandria, Virginia 22315–3868. ATTN: (Virginia R. Pankow), or call Department of the Army reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Lock Performance Monitoring System (LMPS); Waterway Traffic Report, ENG FORMS 3102C and 3102D; OMB Control Number 0710–0008.

Needs and Uses The U.S. Army Corps of Engineers utilizes the data collected to monitor and analyze the use and operation of federally owned and operated locks; owners, agents and masters of vessels and estimated tonnage and commodities carried. The information is used for sizing and scheduling replacement or maintenance of locks and canals.

Affected Public: Business or other for-profit.

Annual Burden Hours: 28,500.

Number of Respondents: 3,000.

Responses per Respondent: 228.

Average Burden per Response: 2.5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The data is used primarily by the Corps of Engineers in conducting a system wide approach to planning and management on the waterway. The Headquarters, Division and District Offices use the information specifically to assist in making determinations on: Adequate staffing for operations and maintenance of the navigation locks and dams; to justify the hours of locks operations; to provide a basis to justify the continued funding as set out in the President's Operation and Maintenance, General Budget; to schedule route maintenance and repairs; to serve as a basis for studies and plans for improvement; for lock operating procedures; to provide data to be used in analyses for major modifications or replacements to lock and dam structures; and to forecast the impact the lock delays, downtown, and proposed changes have on the diversion of waterborne commerce to other transportation modes.

Dated: May 29, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17649 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0023]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Sue Hennen), 646 Swift Road, West Point, NY 10996–1905, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Offered Candidate Procedures, USMA Forms 5–490, 2–66, 847, 5–489, 5–519, 8–2, 5–599, 480–1; OMB Control Number 0702–0062.

Needs and Uses: West Point candidates provide personal background information that allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to the U.S. Military Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 11,720.

Number of Respondents: 46,880.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C. 4346 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding potential candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: June 30, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17641 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2009–0018]

Proposed Collection; Comment Request

AGENCY: Marine Corps Marathon, Marine Corps Base Quantico, DoD.

ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Marine Corps Marathon, Marine Corps Base Quantico announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Marine Corps Marathon office, Attn: Angela Huff, P.O. Box 188, Quantico, VA 22134, or call the Marine Corps Marathon office at 703–432–1159.

Title and OMB Number: Marine Corps Marathon Race Applications; OMB Number 0703–0053.

Needs and Uses: The information collection requirement is necessary to obtain and record the information of runners to conduct the races, for timing purposes and for statistical use.

Affected Public: Individuals or households.

Annual Burden Hours: 4405.34.

Number of Respondents: 52,848.

Responses per Respondent: 1.

Average Burden per Response: 5 Minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are runners who are signing up for the Marine Corps Marathon races held by the Marine Corps Marathon office, Marine Corps Base Quantico. The six races defined under OMB number 0703–0053 are the Marine Corps Marathon, the Marine Corps Marathon 10K, and the Marine Corps Marathon Healthy Kids Fun Run, Marine Corps Historic Half, Marine Corps Marathon Race Series and Quantico RunAmuck. The additional race to be added to the OMB number is the Semper Fred 5K. The following names have been changed from Quantico Meet to Marine Corps Marine Run 2 Register, Mud Run to Run Amuck, The Warrior Hill Run has been eliminated, Concert Run to Run Stock, and Turkey Trot to Crossroads 12K/5K. The Marine Corps Marathon office records all runners to conduct the races in preparation and execution of the races and to record statistical information for sponsors, media and for economic impact studies. Collecting this data of the runners is essential for putting on the races.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17643 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket No. USA–2009–0013]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 24, 2009.

Title, Form and OMB Number: Customer Service Survey—Regulatory Program, U.S. Army Corps of Engineers, ENG FORMS 5065; OMB Control Number 0710–0012.

Type of Request: Extension.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Annual Responses: 60,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 15,000.

Needs and Uses: The surveys of applicants who are required to obtain permits from the U.S. Army Corps of Engineers to build on or conduct dredge and fill operations in United States waters. Opinions on the quality of service are used to make program improvements.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17648 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0018]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, U.S. Army Corps of Engineers, Institute for Water Resources (IWR), Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, LA 70161, ATTN: CEIWR–NDC–C (David L. Penick, CEIWR–NDC–C), or call Department of the Army reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Terminal and Transfer Facilities Descriptions, IWR Forms 1–9; OMB Control Number 0710–0007.

Needs and Uses: Data gathered and published as one of the 56 Port Series Reports, relating to terminals, transfer facilities, storage facilities, and intermodal transportation. This information is used in navigation, planning, safety, National security, emergency operations, and general interest studies and activities. Respondents are terminal and transfer facility operators. These data are essential to the Waterborne Commerce Statistics Center in Exercising their enforcement and quality control responsibilities in the collection of data from vessel reporting companies.

Affected Public: Business or other for-profit; Federal government; and State, Local or Tribal government.

Annual Burden Hours: 316.

Number of Respondents: 1,262.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Federal Emergency Management Agency (FEMA) has used the port facility data in rapidly identifying affected businesses in need of assistance during the flooding events. Military interest of the Army, Navy, and Coast Guard are met with information on intermodal connections, terminal transfer and storage facilities and loading equipment capabilities in the event of rapid military deployment, or National emergencies. The Army's Military Surface and Deployment and Distribution Command (SDDC) uses the information as a baseline for updating their ''Ports for National Defense'' mission.

Dated: May 29, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17647 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0020]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Biometrics Task Force, 1901 South Bell, Suite 900, Crystal City, VA 22202. ATTN: (Michael E. Davis., LTC)., or call Department of the Army reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Defense Biometric Services, OMB Control Number 0702–TBD.

Needs and Uses: Information collection is needed to obtain the necessary data for effective screening of individuals seeking logical access to DoD facilities, installations, and networks. The information is used to established eligibility for access purposed, detection of fraud, law enforcement purposes and, in some cases, anti-terrorism screening.

Affected Public: Individuals or households; Business or other for profit; Not-for-profit institution; farms; Federal government, State, local or tribal government.

Annual Burden Hours: 83,333.

Number of Respondents: 500,000.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of information Collection

Respondents are members of the armed forces, reserves, and others seeking access to DoD facilities, installations, and networks. Biometrics and associates contextual data will be collected at time of enrollment and the biometric verifies at points of entry to confirm the identity of the individual. Securing DoD facilities, installations, and networks, reducing fraud, and eliminating the insider threat are all key to ensuring the ability of DoD to protect personnel and the nation.

Dated: May 29, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17642 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0022]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Sue Hennen), 646 Swift Road, West Point, NY 10996–1905, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Candidate Procedures, USMA Forms 21–16, 21–23, 21–25, 21–26, 5–520, 5–518, 5–497, 481, 546, 5–2, 5–26, 5–515, 480–1, 520, 261, 21–14, 21–8; OMB Control Number 0702–0061.

Needs and Uses: West Point candidates provide personal background information that allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Annual Burden Hours: 11,720.

Number of Respondents: 46,880.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C. 4346 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding potential candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: June 30, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17640 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0021]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 22, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received, without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Sue Hennen), 646 Swift Road, West Point, NY 10996–1905, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Pre-Candidate Procedures, USMA–375, USMA–723, USMA–450, USMA–21–12, USMA–21–27, USMA–381; OMB Control Number 0702–0060.

Needs and Uses: West Point candidates provide personal background information which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Annual Burden Hours: 9.930.

Number of Respondents: 66,200.

Responses per Respondent: 1.

Average Burden per Response: 9 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C. 4336 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding potential candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: June 30, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–17639 Filed 7–23–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for Military Training Activities at Makua Military Reservation (MMR), Hawaii

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: Senior Commander, US Army Hawaii, has reviewed the Final Environmental Impact Statement (EIS) for Military Training Activities at MMR and has made the decision to proceed with a variation of Alternative 2 to recommence live-fire training at MMR. Alternative 2 in the Final EIS analyzes up to 50 combined-arms live-fire exercises (CALFEX) and 200 convoy live-fire exercises (LFX). The variation of Alternative 2 allows up to 32 CALFEXs and 150 convoy LFXs, and allows squad- and platoon-level LFXs that lead up to the company-level CALFEX. This decision also reconfirms that the Army will not use MMR for live-fire training at night until all relevant fire suppression measures are met and approved in accordance with the U.S. Fish and Wildlife Service 2007 and 2008 Biological Opinions. The Army has decided not to use the following weapon systems at MMR in order to further protect the environmental and cultural resources of the valley: Tracer ammunition; Javelin and inert, tube-launched, optically tracked, wire-guided (TOW) missiles; anti-tank (AT–4) and 2.75-inch rockets; the shoulder-launched multipurpose assault weapon (SMAW); and illumination munitions. This decision also eliminates the use of Ka'ena Point and C–Ridge for training, due to the risk of wildfire and the potential impacts to threatened and endangered species. This Alternative 2 variation represents a proper balance for meeting the training requirements of the units of the 25th Infantry Division (ID), U.S. Army Reserve, Hawaii Army National Guard, and other users of the range at MMR, while ensuring the Army meets its responsibilities to preserve the land and resources at MMR, and continues to be a good neighbor to the community along the Wai'anae coast.

ADDRESSES: Address requests for a copy of the ROD to the U.S. Army Garrison, Hawaii, Attention: Public Affairs Office, 742 Santos Dumont, WAAF, Schofield Barracks, HI 96857, or download a copy from the following Web site: *http://www.garison.hawaii.army.mil/makuaeis.*

FOR FURTHER INFORMATION CONTACT: U.S. Army Garrison, Hawaii Public Affairs Office at (808) 656–3152; facsimile at (808) 656–3162 during normal business hours Monday through Friday, 9 a.m. to 5 p.m. HST.

SUPPLEMENTARY INFORMATION: The Final EIS assessed four alternatives to accomplish combined-arms live-fire training on Hawaii: MMR Alternative 1 (Reduced Capacity Use with Some Weapons Restrictions), MMR Alternative 2 (Full Capacity Use with Some Weapons Restrictions), MMR Alternative 3 (Full Capacity Use with Fewer Weapons Restrictions), and Pohakuloa Training Area (PTA) Alternative 4 (Full Capacity Use with Fewer Weapons Restrictions). A No Action Alternative, under which non live-fire military training would continue to be conducted at MMR, was also evaluated.

Implementation of the Alternative 2 variation may result in several major impacts to: Recreational resources, noise from training, soils, natural resources (including threatened and endangered species), cultural resources, surface water quality from erosion, wildfires, and to public safety from the transport of munitions through the Wai'anae community.

The Army has adopted all practicable mitigation measures to avoid or minimize environmental harm. Mitigation measures are summarized in the ROD and are described in greater detail in Chapter 4 of the Final EIS.

Recommencing live-fire military training activities at MMR was selected because it best meets the military's collective training requirements. The decision to proceed with a variation of Alternative 2 incorporates analyses in the Final EIS, involvement from the public, consideration of the cumulative impacts associated with all the alternatives evaluated, and the training requirements of the 25th ID.

The EIS considered construction of facilities at Pohakuloa Training Area on the island of Hawaii (Alternative 4). This alternative did not meet the purpose and need of the proposed action as well as the selected action. A fuller rationale for the decision can be found in the ROD.

Dated: July 16, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. E9–17372 Filed 7–23–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 22, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 21, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Notice Inviting Proposals for Experimental Sites.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 250.

Abstract: With this notice, the Secretary invites proposals to reinvent the administration of Federal student assistance programs through the use of the experimental sites authority (Section 487A(d) of the Higher Education Act of 1965, as amended). The program is intended to encourage institutions to develop innovative strategies to improve Title IV program administration.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4091. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–17713 Filed 7–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. This notice is appearing in the **Federal Register** less than 15 days before the date of the meeting of the Board because of late additions to the closed meeting schedule. Individuals who will need special accommodations in order to attend the meeting (*i.e.*; interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 31, 2009. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: August 6–8, 2009.

Times

August 6: Committee Meetings

Assessment Development Committee: Closed Session—8:30 a.m. to 2 p.m.

Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities and English Language Learners: Open Session—2 p.m. to 4 p.m.

Executive Committee: Open Session—4:30 p.m. to 5 p.m.; Closed Session—5 p.m. to 6 p.m.

August 7

Full Board: Open Session—8:30 a.m. to 9:45 a.m.; Closed Session—12:30 p.m. to 1:30 p.m.; Open Session—1:30 p.m. to 4:30 p.m.

Committee Meetings

Assessment Development Committee: Open Session—10 a.m. to 11 a.m.; Closed Session—11 a.m. to 12:15 p.m.

Committee on Standards, Design and Methodology: Open Session—10 a.m. to 12:15 p.m.

Reporting and Dissemination Committee: Open Session—10 a.m. to 12:15 p.m.

August 8

Nominations Committee: Closed Session—7:45 a.m. to 8:15 a.m.

Full Board: Closed Session—8:30 a.m. to 10 a.m.; Open Session—10 a.m. to 12 p.m.

Location: Mandarin Oriental Hotel, 1330 Maryland Avenue, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment specifications and frameworks, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On August 6, 2009, the Assessment Development Committee will meet in closed session from 8:30 a.m. to 2 p.m. and the Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities and English Language Learners will meet in open session from 2 p.m. to 4 p.m. Thereafter, the Executive Committee will meet in open session from 4:30 p.m. to 5 p.m. and in closed session from 5 p.m. to 6 p.m.

During the closed session on August 6, 2009 the Assessment Development Committee will review secure NAEP test questions in grades 4, 8, and 12 for the 2010 operational assessments in U.S. History and secure writing prompts in the computer-based platform at grades 8 and 12 for the 2010 pilot test. The meeting must be conducted in closed session as disclosure of test items would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 6, 2009, the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering the 2008–2012 assessment years, based on funding for Fiscal Year 2009–2010. The discussion of contract options and costs will address the implications for congressionally mandated goals and adherence to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The second portion of the closed session of the Executive Committee is for discussion of nominees for the office of Vice-Chair of the Board for the one-year term from October 1, 2009 through September 30, 2010. Under the current NAGB by-laws, the Board selects a Vice-Chair from among its members. The Executive Committee will review the names of the candidates for Vice Chair, and will forward a recommendation to the whole Board for a final vote. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On August 7, the full Board will meet in open session from 8:30 a.m. to 9:45 a.m. The Board will review and approve the agenda and the May 2009 Board meeting minutes. Following these actions, the Chairman will introduce the Governing Board's new Executive Director, Cornelia Orr, who will then address the Board. Following her remarks, John Easton, Director, Institute of Education Sciences, will provide some remarks and engage in open discussion with the Board. This will be followed by an update from the Acting Commissioner of Education, Stuart Kerachsky, on the work of the National Center for Education Statistics.

From 10 a.m. to 12:15 p.m., two of the Board's standing committees—the Reporting and Dissemination Committee, and the Committee on Standards, Design and Methodology will meet in open sessions. The Assessment Development Committee will meet in open session from 10 a.m. to 11 a.m. From 11 a.m. to 12:15 p.m. the Assessment Development Committee will meet in closed session to review secure writing prompts in the computer-based platform for the 2010 pilot test in grades 8 and 12 and reading passages at grade 4 for the 2010 special study on accessible booklets. This portion of the Assessment Development Committee is closed since disclosure of test items and data would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in closed session from 12:30 p.m. to 1:30 p.m. to receive a briefing on the 2007 NCES Study on Mapping State Proficiency Standards onto the NAEP Scale from Peggy Carr, the Associate Commissioner of NCES. The Governing Board will be provided with embargoed data on the Mapping Study that cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NCES statistics program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 1:30 p.m. to 2:45 p.m., the full Board will receive a briefing on the Expert Panel reports to the Ad Hoc Committee on NAEP Testing and Reporting of Students with Disabilities and English Language Learners. This will be followed by an update on the Common Core Standards Project from 3 p.m. to 3:45 p.m. Thereafter, the Board will receive an update on the NAEP 2012 Technological Literacy Framework Project. The August 7 session of the Board meeting is scheduled to adjourn at 4:30 p.m.

On August 8, the Nominations Committee will meet in closed session from 7:45 a.m. to 8:15 a.m. to review and discuss confidential information regarding nominees received for Board vacancies for terms beginning on October 1, 2009. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would

constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in closed session on August 8 from 8:30 a.m. to 10 a.m. to receive a demonstration on NAEP Science Interactive Computer Tasks. The interactive computer tasks are secure items and cannot be discussed in an open meeting. Premature disclosure of the test items would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Thereafter, the Board will meet in open session from 10:15 a.m. to 12 p.m. to review and take action on Committee reports. The August 8, 2009 session of the Board meeting is scheduled to adjourn at 12 p.m.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: July 21, 2009.

Cornelia Orr,

Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. E9–17728 Filed 7–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of an Additional Scoping Meeting for the Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury, Extension of the Public Comment Period, and Correction

AGENCY: Department of Energy.

ACTION: Notice of an Additional Scoping Meeting, Extension of the Public Comment Period, and Correction.

SUMMARY: On July 2, 2009, the Department of Energy (DOE or the Department) published its Notice of Intent to prepare an *Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury* (*Mercury Storage EIS*) (74 FR 31723). In that Notice of Intent, DOE invited public comments on the proposed scope of the Mercury Storage EIS during a 45-day public scoping period and announced seven public scoping meetings would be held in the vicinity of the sites proposed for evaluation in this EIS as candidate facilities for the long-term management and storage of elemental mercury generated within the United States. DOE is now announcing the addition of a public scoping meeting to be held on August 13, 2009, in Portland, Oregon, and an extension of the public scoping period. DOE also is correcting language contained in the July 2, 2009, Notice of Intent.

DATES: DOE is extending the scoping period from the 45 days previously announced to 52 days. DOE invites public comment on the scope of this EIS during a public scoping period that commenced on July 2, 2009, and has been extended from August 17, 2009, to August 24, 2009. DOE will hold all of the public scoping meetings on this EIS from 5:30 p.m.–9:30 p.m.. The added public scoping meeting will be held as follows:

August 13, 2009. Red Lion Portland Convention Center, 1021 NE., Grand Avenue, Portland, OR 97232.

All other public scoping meetings will be held as announced in the July 2, 2009, Notice of Intent. Additional details on all scoping meetings will be provided in local media and at *http://www.mercurystorageeis.com*.

In defining the scope of the EIS, DOE will consider all comments received or postmarked by the end of the scoping period. Comments received or postmarked after the scoping period end date will be considered to the extent practicable.

ADDRESSES: Written comments on the scope of the EIS may be submitted by mail to: Mr. David Levenstein, EIS Document Manager, P.O. Box 2612 Germantown, MD 20874, by toll free fax to 1–877–274–5462; or through the EIS Web site at *http://www.mercurystorageeis.com*.

To be placed on the EIS distribution list, any of the methods listed under **ADDRESSES** above can be used. In requesting a copy of the Draft EIS, please specify whether the request is for a copy of the Summary only, the entire Draft EIS, or the entire Draft EIS (which includes the Summary) on a compact disc. In addition, the Draft EIS will be available on the DOE NEPA Web site at *http://www.gc.energy.gov/NEPA/* and at the EIS Web site referenced above.

FOR FURTHER INFORMATION CONTACT: For further information about the EIS, please contact Mr. David Levenstein, EIS Document Manager, Office of Regulatory Compliance (EM–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. For general information concerning DOE's NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail: *askNEPA@hq.doe.gov*; telephone 202–586–4600; fax 202–586–7031; or leave a message at 1–800–472–2756. This Notice will be available at *http://www.gc.energy.gov/NEPA/* and at *http://www.mercurystorageeis.com*.

SUPPLEMENTARY INFORMATION: On July 2, 2009 (74 FR 31723), the Department published a Notice of Intent in the **Federal Register**. We believe it is necessary to issue the following correction to read:

- On page 31723, the first sentence of the ''Background'' section is corrected to read: The Mercury Export Ban Act of 2008 (Pub. L. No. 110–414), amends section 6 of the Toxic Substances Control Act (TSCA) (15 USC 2605) to prohibit, effective October 14, 2008, any Federal agency from conveying, selling, or distributing (with certain limited exceptions) to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency. In all other respects, the **SUPPLEMENTARY INFORMATION** section of the July 2, 2009, Notice of Intent remains the same.

The Mercury Export Ban Act also prohibits the export of elemental mercury from the United States effective January 1, 2013 (subject to certain essential use exceptions). Section 5 of the Act, *Long-Term Storage*, directs DOE to designate a facility or facilities for the

long-term management and storage of elemental mercury generated within the United States. DOE's facility or facilities must be operational by January 1, 2013, and ready to accept custody of elemental mercury delivered to such a facility. The Act also requires DOE to assess fees based upon the *pro rata* costs of long-term management and storage. For additional supplementary information regarding anticipated mercury inventory, proposed NEPA alternatives, and preliminary identification of environmental issues, please refer to the July 2, 2009, Notice of Intent.

Purpose and Need for Action

DOE needs to develop a capability for the safe and secure long-term management and storage of elemental mercury as required by the Act. Accordingly, the Department needs to identify an appropriate facility or facilities to host this activity.

Proposed Action

DOE proposes to select one or more existing (including modification as needed) or new facilities for the long-term management and storage of elemental mercury in accordance with the Act. Facilities to be constructed as well as existing or modified facilities must comply with applicable requirements of section 5(d) of the Act, *Management Standards for a Facility*, including the requirements of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and other permitting requirements. DOE intends to identify the facility or facilities through the NEPA process. EPA is a cooperating agency on the EIS.

EIS Process and Invitation to Comment

NEPA implementing regulations require an early and open process for determining the scope of an EIS and for identifying the significant issues related to the proposed action. Accordingly, DOE has invited Federal agencies, State, local and Tribal governments, the general public and international community to comment on the scope of the EIS, including identification of reasonable alternatives and specific issues to be addressed. DOE will hold public meetings on the scope of the EIS. (See **DATES** section above for detailed information.)

At each scoping meeting, DOE plans to hold an open house one hour prior to the formal portion of the meetings to allow participants to register to provide oral comments, view informational materials, and engage project staff. The registration table will have an oral comment registration form as well as a sign up sheet for those who do not wish to give oral comments but who would like to be included on the mailing list to receive future information. The public may provide written and/or oral comments at the scoping meetings. Analysis of all public comments provided during the scoping meetings as well as those submitted as described in **ADDRESSES** above, will be considered in helping DOE further develop the scope of the EIS and potential issues to be addressed. DOE expects to issue a Draft EIS in the fall of 2009.

Issued in Washington, DC on July 17, 2009.

Frank Marcinowski,

Deputy Assistant Secretary for Regulatory Compliance, Office of Environmental Management.

[FR Doc. E9–17566 Filed 7–23–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10359–044]

Public Utility District No. 1 of Snohomish County, WA ; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 17, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 10359–044.

c. *Date Filed:* June 19, 2009.

d. *Applicant:* Public Utility District No. 1 of Snohomish County, WA.

e. *Name of Project:* Youngs Creek Hydroelectric Project.

f. *Location:* When constructed, the proposed project will be located on Youngs Creek, in Snohomish County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Steve Klein, General Manager, Snohomish County PUD No. 1, 2320 California Street, P.O. Box 1107, Everett, Washington 98206; telephone (425) 783–8473.

i. *FERC Contact:* Anthony DeLuca, telephone (202) 502–6632, and e-mail address *Anthony.deluca@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 18, 2009.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–10359–044) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:*

(i) *Amendment to Project Design:* The Public Utility District No. 1 of Snohomish County proposes to decrease the project's rated turbine capacity from the originally licensed 8.3 MW (11,067 horsepower) to 7.5 MW (10,000 horsepower), and to change the type of turbine to a horizontal shaft, 2-jet impulse Pelton turbine connected to a synchronous type generator rated at 8,333 kVA at a 0.9 power factor (7,500 kW). This decrease in the turbine's capacity will decrease the project's maximum hydraulic capacity from 140 cfs to 120 cfs. The licensee also plans to change the operating voltage of the project transmission line to 12.5 kilovolts as originally licensed, correct the length of transmission line in the original license from 6.1 miles to 8.2 miles, and install certain segments of transmission line on existing overhead distribution poles while installing the remaining segments of the transmission line underground. The transmission line will continue to follow the alignment as provided in the current license.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in

the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17692 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13160–002]

Red River Hydro LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

July 17, 2009.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 13160–002.

c. *Dated Filed:* July 16, 2009.

d. *Submitted by:* Red River Hydro LLC.

e. *Name of Project:* Overton Lock and Dam Hydroelectric Project.

f. *Location:* On the Red River in Rapides Parish, Louisiana at the U.S. Army Corps of Engineers' existing Overton Lock and Dam.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Brent L. Smith, COO, Symbiotics LLC, P.O. Box 535, Rigby, Idaho 83442, (208) 745–0834 or e-mail at *brent.smith@symbioticsenergy.com*.

i. *FERC Contact:* Lesley Kordella at (202) 502–6406 or e-mail at *Lesley.Kordella@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Red River Hydro LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Overton Lock and Dam Hydroelectric Project) and number (P–13160–002), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by September 15, 2009.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*)

under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday August 12, 2009.
Time: 7 p.m.
Location: Sai Convention Center, 2301 N. MacArthur Drive, Alexandria, LA, 71301.
Phone: (318) 619–3300.

Evening Scoping Meeting

Date: Thursday August 13, 2009.
Time: 10 a.m.
Location: Sai Convention Center, 2301 N. MacArthur Drive, Alexandria, LA, 71301.
Phone: (318) 619–3300.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the project on Wednesday, August 12, 2009. Those wishing to participate should meet at the John H. Overton Lock and Dam Recreation Area (west) at 9 a.m. For directions, and to appropriately accommodate persons interested in attending the site visit, participants should contact Erik Steimle by August 6, 2009 [e-mail, *erik.steimle@symbioticsenergy.com* or phone, (503) 235–3424]. All participants are responsible for their own transportation.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17693 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2492–010, 2618–020 and –021, and 2660–024 and –025]

Domtar Maine Corporation and Domtar Maine LLC; Notice of Applications for Transfer of Licenses, Substitution of Relicense Applicant, and Soliciting Comments, Motions To Intervene, and Protests

July 17, 2009.

On June 9, 2009, Domtar Maine Corporation (Transferor) and Domtar Maine LLC (Transferee) filed a joint application for: (1) The transfer of licenses of the Vanceboro Project No. 2492, located on the East Branch of the St. Croix River in Washington County, Maine and New Brunswick, Canada, the West Branch Project No. 2618, located on the West Branch of the St. Croix River in Hancock, Penobscot, and Washington Counties, Maine, and the Forest City Project No. 2660, located on the East Branch of the St. Croix River in Washington and Aroostock Counties, Maine, and New Brunswick, Canada, and (2) the substitution of the Transferee for the Transferor as the applicant in the pending applications for new licenses filed by the Transferor in Project Nos. 2618–020 and 2660–024.

The transfer application was filed within five years of the expiration of the license for Project Nos. 2618 and 2660, which are the subject of pending relicensing applications. In *Hydroelectric Relicensing Regulations Under the Federal Power Act* (54 *FR* 23756 *FERC Stats. and Regs., Regs. Preambles* 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing.

Applicant Contact: C. Scott Beal, Domtar Maine LLC, 144 Maine Street, Baileyville, ME 04694, phone (207) 427–4004.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, protests, and motions to intervene: 30 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–2492–010, 2618–021, and 2660–025) in the docket number field to

access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17694 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 16, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2369–006.

Applicants: Alliance for Cooperative Energy Services.

Description: Amendment to May 4, 2009 Notice of Non-Material Change in Status of Alliance for Cooperative Energy Services Power Marketing LLC.

Filed Date: 07/15/2009.

Accession Number: 20090715–5149.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 05, 2009.

Docket Numbers: ER99–2948–017; ER00–2918–016; ER00–2917–016; ER05–261–009; ER01–556–015; ER01–1654–018; ER02–2567–016; ER05–728–009; ER04–485–013; ER07–247–008; ER07–245–008; ER07–244–008.

Applicants: Baltimore Gas and Electric Company, Constellation Power Source Generation LLC, Calvert Cliffs Nuclear Power Plant, Inc., Constellation Energy Commodities Group, Inc., Handsome Lake Energy, LLC, Nine Mile Point Nuclear Station, LLC, Nine Mile Point Nuclear Station LLC, Constellation NewEnergy, Inc., Constellation Energy Commodities Group Maine, R.E. Ginna Nuclear Power Plant, LLC, Raven One, LLC, Raven Two, LLC, Raven Three, LLC.

Description: Baltimore Gas and Electric Company et al. submit Substitute Third Revised Sheet 2 et al. to FERC Electric Tariff, Original Volume 1 under ER99–2948 et al.

Filed Date: 07/13/2009.

Accession Number: 20090715–0093.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: ER04–925–021.

Applicants: Merrill Lynch Commodities, Inc.

Description: Notification of Non-Material Change in Status.

Filed Date: 07/15/2009.

Accession Number: 20090715–5105.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 05, 2009.

Docket Numbers: ER09–553–001.

Applicants: Vista Energy Marketing, LP.

Description: Vista Energy Marketing, LP supplements its 1/26/09 application for market based rate authority and its 4/10/09 amendment filing pursuant to FERC's 6/9/09 Order.

Filed Date: 07/09/2009.

Accession Number: 20090714–0071.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–873–001.

Applicants: ISO New England, Inc.

Description: ISO New England, Inc. submits Compliance filing providing information required by FERC's June 11, 2009 Order, for acceptance.

Filed Date: 07/13/2009.

Accession Number: 20090714–0088.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Docket Numbers: ER09–991–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits its proposal for a transition program for Emergency Demand Response Day-Ahead Offers to comply with FERC's June 12, 2009 Order.

Filed Date: 07/13/2009.

Accession Number: 20090714–0089.

Comment Date: 5 p.m. Eastern Time on Monday, August 03, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–32–001.

Applicants: System Energy Resources, Inc.

Description: Supplemental Information of System Energy Resources, Inc.

Filed Date: 07/15/2009.

Accession Number: 20090715–5144.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17625 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

July 15, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–826–000.

Applicants: Central New York Oil and Gas Co., LLC.

Description: Central New York Oil and Gas Company, LLC submits First Revised Sheet 103A et al. to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 07/13/2009.

Accession Number: 20090714–0067.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09–827–000.

Applicants: Cimarron River Pipeline, LLC.

Description: 2009 Annual Report of Cash Out Activity of Cimarron River Pipeline, LLC.

Filed Date: 07/14/2009.

Accession Number: 20090714–5032.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09–828–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Fourth Revised Sheet 99A to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 07/14/2009.

Accession Number: 20090714–0102.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: RP09–829–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits two amendments to an existing negotiated rate Transportation Rate Schedule FTS Agreement between MEP and Newfield Exploration Mid-Continent Inc.

Filed Date: 07/14/2009.

Accession Number: 20090714–0101.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17664 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Interconnection of the Grapevine Canyon Wind Project, Coconino County, AZ

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement/ Environmental Impact Report and Conduct Scoping Meetings; Notice of Floodplain and Wetlands Involvement.

SUMMARY: The Western Area Power Administration (Western), an agency of the DOE, intends to prepare an environmental impact statement (EIS) on the interconnection of the Grapevine Canyon Wind Project (Project) in Coconino County, near Flagstaff, Arizona. Foresight Flying M, LLC (Foresight) has applied to Western to interconnect the proposed Project to Western's power transmission system on its Glen Canyon-Pinnacle Peak Transmission Line. Western is issuing this notice to inform the public and interested parties about Western's intent to prepare an EIS, conduct a public scoping process, and invite the public to comment on the scope, proposed action, alternatives, and other issues to be addressed in the EIS.

The EIS will address Western's Federal action of interconnecting the proposed Project to Western's transmission system and making any necessary modifications to Western facilities to accommodate the interconnection. The EIS will also review the potential environmental impacts of constructing, operating, and maintaining Foresight's wind generation facility and associated facilities, including access roads, collection and feeder lines, step-up substation, communications system, transmission tie-line, and switchyard.

DATES: The public scoping period begins with the publication of this notice and closes on August 28, 2009. Public scoping meetings will be held on August 10 and 11, 2009.

ADDRESSES: Please see the **SUPPLEMENTARY INFORMATION** section for scoping meeting locations. Written comments on the scope of the EIS should be addressed to Ms. Mary Barger, National Environmental Policy Act (NEPA) Document Manager, Western Area Power Administration, Desert Southwest Region, P.O. Box 6457, 615 S. 43rd Avenue, Phoenix, AZ 85005 or *GrapevineWindEIS@wapa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Barger, NEPA Document Manager, Western Area Power Administration, Desert Southwest Region, P.O. Box 6457, 615 S. 43rd Avenue, Phoenix, AZ 85005, telephone (602) 605–2524, fax (602) 605–2630, or e-mail *GrapevineWindEIS@wapa.gov*. For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western, an agency within DOE, markets Federal hydroelectric power to preference customers, as specified by law. These customers include municipalities, cooperatives, irrigation districts, Federal and State agencies, and Native American tribes. Western's service territory covers 15 western states, including Arizona. Western owns and operates more than 17,000 miles of high-voltage transmission lines.

Foresight has applied to Western to interconnect the proposed Project at a new switchyard on Western's Glen Canyon-Pinnacle Peak Transmission Line. Western offers capacity on its transmission system to deliver electricity, when such capacity is available, under Western's Open Access Transmission Service Tariff.

Foresight also has applied to the U.S. Forest Service for a permit to build, operate, and maintain a portion of the proposed project on Coconino National Forest land. Additionally, Foresight is subject to State and local approvals prior to building the proposed Project, including the following: a Certificate of

Environmental Compatibility from the Arizona Corporate Commission, right of way from the Arizona State Land Department, and a Conditional Use Permit from Coconino County.

Project Description

Foresight proposes to construct a wind energy generation project up to 500 megawatts (MW). It would occupy approximately 55 square miles in Coconino County, Arizona. The wind generation component of the proposed Project would be located about 22 miles southeast of Flagstaff and about18 miles south of the Twin Arrows Interstate-40 interchange. It would be located within the Pinyon-Juniper Woodland Ecozone of the Colorado Plateau Semi-Desert Province in the northeastern quarter of Arizona. The area has primarily pinyon-juniper and desert scrub vegetation types. The current land use is agricultural, primarily livestock grazing. Each wind turbine would involve the disturbance of about 1.0 to 1.6 acres.

The wind generation component of the proposed Project would be constructed on private lands and land administered by the Arizona State Land Department. The proposed Project would generate electricity from wind turbine generators rated at 1.5 to 3.0 MW. Final turbine selection and size is subject to further wind analysis, and will determine the number of turbines. Each turbine would have three blades that would revolve at less than approximately 18 revolutions per minute. Each blade would measure 125 to 185 feet long. The single pole structures supporting each of the turbines would be up to 325 feet high and approximately 20 feet in diameter at the base. Each turbine structure would be up to approximately 500 feet high, when a blade is in the 12 o'clock position. Each would be installed on a concrete base, and would have a pad-mounted transformer near the base. Lighting would be in accordance with Federal Aviation Administration requirements.

There would be an all-weather service road constructed to each turbine location. The wind turbines would be connected by an electrical collection system, power collection circuits, and a communications network. This collection system would be buried, where feasible, in areas without major subsurface obstructions. Foresight would site the wind turbine generators to optimize wind and land resources in the area while minimizing environmental impacts to the extent practicable. Foresight would comply with local zoning requirements, including setbacks from residences, roads, and existing transmission and distribution lines. Foresight would begin construction on the proposed Project approximately fall 2010. The life of the proposed Project is anticipated to be a minimum of 30 years.

To support delivery of the power generated by the Project, Foresight proposes to build a new 345-kV transmission tie-line, approximately 9 miles in length, to a new 345-kV switchyard, located immediately adjacent to Western's existing Glen Canyon-Pinnacle Peak Transmission Line. The transmission tie-line would cross lands administered by Coconino National Forest. The right-of-way for the transmission line would be about 8.5 miles in length by 200 feet wide, for a total disturbance area of about 206 acres. The physical area affected by the new switchyard would be about 10 acres. The proposed Project area would be accessed by an existing road about 18 miles in length that would require some realignment for construction activities.

Proposed Agency Action and Alternatives

Western's proposed action is to interconnect the proposed Project to Western's transmission system. The U.S. Forest Service's proposed action is to grant a permit for the transmission line to cross Federal lands and for associated road improvements. Any additional action alternatives identified will be analyzed in the EIS.

Western will also consider the no-action alternative in the EIS. Under the no-action alternative Western would not interconnect and/or the U.S. Forest Service would not issue a permit.

Agency Responsibilities

Because interconnection of the proposed Project would incorporate a major new generation resource into Western's power transmission system, Western has determined that an EIS is required under DOE NEPA implementing procedures, 10 CFR part 1021, subpart D, Appendix D, class of action D6. Western will be the lead Federal agency for preparing the EIS, as defined at 40 CFR 1501.5. The proposed Project includes construction of a tie-line across Coconino National Forest land, for which the U.S. Forest Service has jurisdiction and has agreed to be a cooperating agency for preparation of the EIS. Western will invite other Federal, State, local, and tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies may also make a request to Western to be a cooperating agency by contacting Ms. Barger at the address listed above in the **ADDRESSES** section.

The proposed Project may affect floodplains or wetlands. This notice also serves as notice of proposed floodplain or wetland action, in accordance with 10 CFR part 1022.

Environmental Issues

This notice is to inform agencies and the public of Western's intent to prepare an EIS and solicit comments and suggestions for consideration in the EIS. To help the public frame its comments, the following list contains potential environmental issues preliminarily identified for analysis in the EIS:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants.
2. Impacts on avian and bat species.
3. Impacts on land use, recreation, and transportation.
4. Impacts on cultural or historic resources and tribal values.
5. Impacts on human health and safety.
6. Impacts on air, soil, and water resources (including air quality and surface water impacts).
7. Visual impacts.
8. Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations.

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Public Participation

The EIS process includes a public scoping period; public review and hearings on the draft EIS; publication of a final EIS; and publication of a record of decision (ROD). The public scoping period begins with publication of this notice and closes August 28, 2009. At the conclusion of the NEPA process, Western and the U.S. Forest Service will each prepare a ROD. Persons interested in receiving future notices, Project information, copies of the EIS, and other information on the NEPA review process should contact Ms. Barger at the address listed above in the **ADDRESSES** section.

Western will hold public scoping meetings as follows:

1. August 10, 2009, Mormon Lake Fire Station, 43 Mormon Lake Road, Mormon Lake, AZ 86038.
2. August 11, 2009, Northern Arizona Center for Emerging Technologies (NACET), 2225 N. Gemini Drive, Flagstaff, AZ 86001.

Each meeting is scheduled for 6–8 p.m. with an open-house format, during which attendees are invited to speak one-on-one with agency and Project representatives. Project presentations will be given at 6:15 and 7:30 p.m. Attendees are welcome to come and go at their convenience throughout the meeting.

The purpose of the scoping meetings is to provide information about the proposed Project, review Project maps, answer questions, and take written comments from interested parties. All meeting locations are handicapped-accessible. Anyone needing special accommodations should contact Ms. Barger to make arrangements.

The public will have the opportunity to provide written comments at the public scoping meetings, or send them to Western by fax, e-mail, or U.S. Postal Service mail. To help define the scope of the EIS, comments should be received by Western no later than August 28, 2009.

Dated: July 15, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–17700 Filed 7–23–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada Test Site and Off-Site Locations in the State of Nevada

AGENCY: U.S. Department of Energy's National Nuclear Security Administration.

ACTION: Notice of intent to prepare an environmental impact statement and conduct public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) and the U.S. Department of Energy (DOE) regulations implementing NEPA (40 CFR Parts 1500–1508 and 10 CFR Part 1021, respectively), the National Nuclear Security Administration (NNSA), a semi-autonomous agency within DOE, announces its intention to prepare a site-wide environmental impact statement (SWEIS) (DOE/EIS–0426) for the continued operation of DOE/NNSA activities at the Nevada Test Site (NTS) and certain off-site locations (the Remote Sensing Laboratory at Nellis Air Force Base, Las Vegas, Nevada, the DOE/NNSA campus in North Las Vegas, and the Nevada Test and Training Range (NTTR) including activities at the Tonopah Test Range (TTR)) in the State of Nevada. The purpose of this notice is to invite individuals, organizations, and government agencies and entities to participate in developing the scope of the SWEIS.

The new SWEIS will consider a No Action Alternative, which is to continue current operations through implementation of the 1996 Record of Decision (ROD) (61 FR 65551; 12/13/96), and subsequent decisions. Three action alternatives proposed for consideration in the SWEIS would be compared to the No Action Alternative. The three action alternatives would differ by either their type or level of on-going operations and may include proposals for new operations or the reduction or elimination of certain operations.

DATES: NNSA invites comments on the scope of this SWEIS. The public scoping period starts with the publication of this notice in the **Federal Register** and will continue through October 16, 2009. NNSA will consider all comments defining the scope of the SWEIS received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent practicable. NNSA will conduct public scoping meetings in Las Vegas, Tonopah and Pahrump, Nevada and St. George, Utah scheduled as follows:

- Thursday, September 10, 2009—2–4 p.m. and 6–8 p.m.
  Frank H. Rogers Science & Technology Building, Desert Research Institute, 755 East Flamingo Road, Las Vegas, NV.
- Monday, September 14, 2009—5:30–7:30 p.m.
  Bob Ruud Community Center, 150 North Highway 160, Pahrump, NV.
- Wednesday, September 16, 2009—5:30–7:30 p.m.
  Tonopah Convention Center, 301 Brougher Ave., Tonopah, NV.
- Friday, September 18, 2009—5:30–7:30 p.m.
  Holiday Inn Conference Center, 850 South Bluff Street, St. George, Utah.

These scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss issues with NNSA officials regarding the SWEIS. Preparation of the SWEIS will require participation of other Federal agencies. As bordering land managers, the USAF and BLM have an inherent interest in activities at the Nevada Test Site (NTS). The DHS and DTRA are tenant organizations with ongoing and future operations at the NTS: Therefore requests for cooperating agency participation will be extended to the DOE, Department of Defense, U.S. Air Force (USAF) and the Defense Threat Reduction Agency (DTRA), the Department of Homeland Security (DHS), and the Department of the Interior, Bureau of Land Management (BLM.)

ADDRESSES: To submit comments on the scope of the SWEIS, questions about the document or scoping meetings, or to be included on the document distribution list, please contact: Linda M. Cohn, NNSA Nevada Site Office, SWEIS Document Manager, P.O. Box 98518, Las Vegas, Nevada 89193–8518; telephone (702) 295–0077; fax (702) 295–5300; or e-mail address: *nepa@nv.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For general information about the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail: *askNEPA@hq.doe.gov*; telephone: 202–586–4600, or leave a message at 1–800–472–2756; or fax: 202–586–7031. Please note that U.S. Postal Service deliveries to the Washington, DC office may be delayed by security screening. Additional information regarding DOE NEPA activities is available on the Internet through the NEPA Web site at *http://www.gc.energy.gov/nepa.*

SUPPLEMENTARY INFORMATION:

Background

The NTS occupies about 1,375 square miles (3,561 square kilometers) in southern Nevada, and is surrounded on three sides by the U.S. Air Force Nevada Test and Training Range (NTTR) (formerly the Nellis Air Force Range) and the Desert National Wildlife Refuge. The fourth boundary is shared with the Bureau of Land Management. The Nevada Site Office (NSO) operations are managed and performed for DOE/NNSA under contract by a management and operating contractor (currently National Security Technologies, LLC) which teams with personnel from Lawrence Livermore National Laboratory, Los Alamos National Laboratory, and Sandia National Laboratories as well as other governmental entities to perform NTS mission-related activities. NTS is a multi-disciplinary, multi-purpose facility primarily engaged in work that supports national security, homeland security initiatives, waste management, environmental restoration, and defense

and non-defense research and development programs (R&D) for DOE/NNSA and other government entities. Historically, the primary DOE/NNSA mission work conducted at NTS was nuclear weapons testing. Since the moratorium on nuclear testing began in October 1992, NTS has been maintained in a state of readiness to conduct underground nuclear tests, if so directed by the President. It also conducts high-hazard experiments involving nuclear material and high explosives (HE); provides the capability to process and dispose of a damaged nuclear weapon or improvised nuclear device; and conducts non-nuclear experiments, hydrodynamic testing, and HE testing. Nuclear stockpile stewardship activities at the NTS include conducting dynamic plutonium experiments that provide technical information to maintain the safety and reliability of the U.S. nuclear weapons stockpile, and conducting research and training on nuclear safeguards, criticality safety, and emergency response. Special Nuclear Materials are also stored at the NTS. Also, in accordance with the amended 1996 *NTS EIS (DOE/EIS–0243)* ROD, NNSA continues to receive low-level and mixed low-level radioactive waste for disposal at NTS. Sandia National Laboratories, a DOE/NNSA contractor, operates the Tonopah Test Range (TTR) near Tonopah, Nevada for flight testing of gravity weapons (including R&D and testing of nuclear weapons components and delivery systems) in support of DOE/NNSA mission requirements.

The 1996 NTS EIS examined existing and potential impacts to the environment from ongoing and anticipated future DOE/NNSA operations conducted over approximately a 10-year period of time at NTS and at off-site locations in the State of Nevada, such as portions of the NTTR including the TTR. NSO's remediation efforts have been completed at Project Shoal and the Central Nevada Test Area.

The four alternatives analyzed in the 1996 NTS EIS were: (1) The No Action Alternative, to continue to operate at the level maintained in the previous 5 years; (2) Discontinue Operations; (3) Expanded Use, and (4) Alternative Use of Withdrawn Lands. DOE's ROD implemented Alternative 3, Expanded Use, plus the public educational activities of Alternative 4, Alternative Use of Withdrawn Lands. This ROD also selected the continuation of low-level and mixed low-level waste management activities as described in the No Action Alternative until decisions on the *Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste* (Waste Management PEIS) (DOE/EIS–0200) could be made. DOE issued its decisions on the Waste Management PEIS in a February 2000 ROD that included an amendment to the 1996 NTS EIS ROD. That February 2000 ROD announced DOE's decision to implement low-level and mixed low-level waste management activities in accordance with the Expanded Use Alternative of the 1996 NTS EIS.

In July 2002, DOE/NNSA completed a 5-year review of the 1996 NTS EIS with the preparation of a Supplement Analysis (SA) (DOE/EIS–0243–SA–01), pursuant to DOE's regulatory requirement to evaluate site-wide NEPA documents at least every 5 years (10 CFR 1021.330) to determine the adequacy of an existing EIS. Based on the 2002 *Supplement Analysis for the Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada* (DOE/EIS–0243–SA–01), DOE/NNSA determined that there were no substantial changes to the actions or impacts evaluated in the NTS EIS, and there were no significant new circumstances or information relevant to environmental concerns. Thus, the existing NTS EIS was adequate and neither a supplemental EIS or a new EIS was required.

In 2003, NNSA prepared a Supplement Analysis entitled *Supplement Analysis for the Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada to Address the Increase in Activities Associated with the National Center for Combating Terrorism & Counterterrorism Training & Related Activities* (DOE–EIS–0243–SA–02) to determine whether an anticipated increase in national security projects after the terrorist attacks of September 11, 2001, required further NEPA analysis. This analysis covered military training/exercises, and testing, evaluation, and development of technology for multiple Federal government agencies. Based upon this review, DOE/NNSA determined that the proposed increase in activities would not result in substantial changes to the NTS EIS or the ROD, and there were no significant new circumstances or information relevant to environmental concerns. Thus, neither a supplemental EIS nor a new EIS was required.

More recently, in 2007, DOE/NNSA initiated its second comprehensive 5-year review of the 1996 NTS EIS and prepared a SA entitled *Draft Supplement Analysis for the Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada* (DOE–EIS–0243–SA–03) which evaluated whether the 1996 NTS EIS continued to remain adequate for ongoing and reasonably foreseeable activities. This document was issued for public review and comment in April 2008. Based upon consideration of comments received on this draft SA regarding potential changes to the NTS program work scope, the DOE/NNSA decided to prepare a new SWEIS for the Continued Operation of the NTS and Off-Site Locations in the State of Nevada for the 10-year period commencing 2010.

Purpose and Need

The purpose and need for agency action is to continue the operation of NTS to provide support for DOE's core missions as directed by the Congress and the President. NTS has a long history of supporting national security objectives through the conduct of underground nuclear tests and other nuclear and non-nuclear activities. Since October 1992, there has been a moratorium on underground nuclear testing. Thus, the present mission of the DOE at NTS is to maintain a readiness to conduct tests. In addition, NTS supports DOE national security related research, development, and testing programs, and DOE's waste management/disposal activities. NTS also provides opportunities for various environmental research projects.

Alternatives for the SWEIS

In accordance with applicable DOE and CEQ NEPA regulations, the No Action Alternative will be analyzed in the SWEIS and will form the baseline for the action alternatives analyzed in the document. In this case, the No Action Alternative will be the continued implementation of the 1996 NTS EIS ROD, and the amendment to the ROD for the NTS (65 FR 10061 at 10065) at DOE/NNSA sites in Nevada over the next 10 years. Additionally, the No Action Alternative will also include the implementation of other decisions supported by separate NEPA analyses completed since the issuance of the final 1996 NTS EIS, including: the *Final Environmental Impact Statement for the Proposed Relocation of Technical Area 18 Capabilities and Materials at Los Alamos National Laboratory* (DOE/EIS–319) and ROD (67 FR 79906); and the *Final Complex Transformation Supplemental Programmatic Environmental Impact Statement* (DOE/EIS–0235–S4) and its RODs (73 FR 77644 and 73 FR 77656) and the *Waste Management PEIS* and ROD (65 FR 10061). The No Action Alternative will

also include actions analyzed in eight environmental assessments and their associated Findings of No Significant Impacts, as well as actions categorically excluded from the need for preparation of either an EA or an EIS. These various documents are identified in the 2008 draft SA. Copies of these documents can be reviewed at the DOE/NNSA Public Reading Rooms at 755 E. Flamingo, Las Vegas, Nevada, and 100 North Stewart Street, Carson City, Nevada, and public libraries in St. George, Utah; and Tonopah and Pahrump, Nevada; and on the internet at: *http://www.gc.energy.gov/nepa.*

Three action alternatives will be considered in the SWEIS: Expanded Operations, Reduced Operations, and Renewable Energy Operations. All three of these alternatives will be compared to the No Action Alternative level of operations. The Expanded Operations Alternative will consider a greater proportion of reasonably foreseeable new work from other Federal organizations as identified by cooperating agencies. This work will relate to nonproliferation and counterterrorism, experiments, research, development and testing. Such expansion could include developing test beds for concept testing of sensors, mitigation strategies and weapons effectiveness. The Reduced Operations alternative will consider an overall reduction in the level of operations and closure of specific buildings and structures. The Renewable Energy Operations Alternative will consider renewable energy R&D and the potential deployment of those technologies on the NTS. Any new facilities/activities, regardless of which alternative they are associated with, will be included in the analysis if they are reasonably foreseeable (*i.e.,* proposed within the next 10 years).

This SWEIS will analyze potential impacts resulting from reasonably foreseeable operations and compare these impacts to those projected in the No-Action Alternative. The SWEIS will analyze projected impacts anticipated from operating the NTS and certain off-site locations in the State of Nevada at the current level with some modified work now being proposed at certain facilities, such as the Radiological and Nuclear Test Evaluation Center and the Non-Proliferation Test and Evaluation Center. Examples of newly proposed actions at NTS include development of enhanced national security programs to include increased homeland security activities in sensor development and testing, and chemical and biological simulant releases, as well as stockpile stewardship activities.

Direct and indirect, as well as unavoidable and irreversible and irretrievable impacts to the environment of the NTS and off-site locations in the State of Nevada will be identified and analyzed in the SWEIS. In addition, updated modeling and analysis will be conducted of potential migration of contaminants in the groundwater from historic nuclear testing on the NTS. Where appropriate, mitigation strategies will also be analyzed in the SWEIS. Further, an updated evaluation of NTS operational and transportation accident analyses, and a new assessment of cumulative impacts of DOE/NNSA operations in Nevada will also be included. DOE/NNSA plans to prepare the SWEIS as an unclassified document with a classified appendix. The classified information will not be available for public review; however, it will be considered in the decision-making process of the SWEIS. DOE/NNSA intends to re-evaluate the range of reasonable alternatives following public scoping.

Preliminary Identification of Environmental Issues

DOE/NNSA proposes to address the issues listed below when considering the potential impacts of each alternative. This list is presented to facilitate public comment during the scoping period and will be revisited as DOE/NNSA considers all scoping comments. It is not intended to be comprehensive, nor to imply any predetermination of impacts.

- Potential effects on the public health from exposure to hazardous materials under routine and credible accident scenarios;
- Impacts on surface and groundwater, and on water use and quality;
- Impacts on air quality and noise;
- Impacts on plants and animals, and their habitats, including species that are Federal- or state-listed as threatened or endangered, or of special concern;
- Impacts on geology and soil;
- Impacts on cultural resources such as Native American sites, historic mining and ranching, and Cold War structures;
- Socioeconomic impacts on potentially affected communities and disproportionately high and adverse impacts to minority and low-income populations;
- Potential impacts on land use.
- Pollution prevention and waste management practices and activities;
- Unavoidable adverse impacts and irreversible and irretrievable commitments of resources;
- Potential cumulative environmental effects of past, present, and reasonably foreseeable future actions;
- Potential impacts of intentional destructive acts, including sabotage and terrorism.

SWEIS Process and Invitation To Comment

The SWEIS scoping process provides an opportunity for the public to assist the DOE/NNSA in determining issues. Four public scoping meetings will be held as noted under **DATES** in this Notice. The purpose of scoping meetings is to provide attendees an opportunity to present comments, ask questions, and discuss concerns regarding the SWEIS with DOE/NNSA officials. Comments and recommendations can also be mailed to Linda M. Cohn as noted in this Notice under **ADDRESSES**. The SWEIS scoping meetings will use a format to facilitate dialogue between DOE/NNSA and the public and will provide individuals the opportunity to give written or oral statements. DOE/NNSA welcomes specific comments or suggestions on the SWEIS process. The SWEIS will describe the potential environmental impacts of each alternative by using available data where possible and obtaining additional data where necessary. Copies of written comments and transcripts of oral comments provided to DOE/NNSA during the scoping period will be available at the DOE Public Reading Room at 755 E. Flamingo, Las Vegas, Nevada, and public libraries in St. George, Utah; Tonopah and Pahrump, Nevada; and on the Internet at *http://www.nv.doe.gov/library/publications/environmental.*

After the close of the public scoping period, DOE/NNSA will begin developing the draft SWEIS. DOE/NNSA expects to issue the draft SWEIS for public review in mid-2010. Public comments on the draft SWEIS will be received for at least 60 days following publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. The Notice of Availability, along with notices placed in local newspapers, will provide dates and locations for public hearings on the draft SWEIS and the deadline for comments on the draft document. Persons who submit comments with a mailing address during the scoping process will receive a copy of the draft SWEIS. Other persons who would like to receive a copy of the document for review when it is issued should notify Linda M. Cohn at one of the addresses provided previously. DOE/NNSA will include all comments received on the draft SWEIS,

and responses to those comments in the final SWEIS. Issuance of the final SWEIS is currently scheduled for mid-2011.

Issued in Washington, DC, this 21st day of July 2009.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. E9–17751 Filed 7–23–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–110–000]

Mississippi Hub, LLC; Notice of Availability of the Environmental Assessment for the Proposed Mississippi Hub Expansion Project

July 17, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) of the Mississippi Hub, LLC (MS HUB) Expansion Project, proposed in the above referenced docket. MS HUB requests authorization to modify its previously-authorized salt cavern natural gas storage facility in Simpson County, Mississippi and construct and operate new natural gas pipeline facilities in Simpson, Jefferson Davis, and Covington Counties, Mississippi.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the MS HUB Expansion Project (project), involving the following construction activities:

- Increasing the working natural gas storage capacity of two previously-authorized solution-mined salt storage caverns from 6.0 billion cubic feet (Bcf) to 7.5 Bcf in each cavern;
- Equipment modifications at the Natural Gas Handling Facility Site, including installation of 15,800 horsepower of additional compression;
- Construction of 22.6 miles of 30-inch-diameter pipeline and 14.2 miles of 24-inch-diameter pipeline, collocated in a single pipeline corridor;
- Aboveground tie-in and metering facilities at proposed pipeline interconnects with the Southeast Supply Header (SESH) pipeline and the Transcontinental Gas Pipe Line Corporation (Transco) pipeline; and
- Various ancillary facilities.

The purpose of the project is to expand MS HUB's high deliverability natural gas storage facility and create new interconnects with the SESH and Transco pipeline systems. The MS HUB Expansion Project would increase the total working gas capacity of the facility from 12 Bcf to 15 Bcf, and increase MS HUB's natural gas withdrawal and injection capabilities.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies; interested groups and individuals; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before August 17, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP09–110–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

Label one copy of the comments for the attention of Gas Branch 3, PJ11.3. Mail your comments promptly, so that they will be received in Washington, DC on or before August 17, 2009.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 Code of Federal Regulations (CFR) 385.214)[1]. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (i.e. CP09–110). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17695 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF84–377–015]

Colstrip Energy Limited Partnership; Notice of Filing

July 17, 2009.

Take notice that on July 15, 2009, Colstrip Energy Limited Partnership (Colstrip) filed with the Commission an application for recertification of a facility as a qualifying small power production facility.

The facility is a small power production facility located in Rosebud County near Colstrip, Montana. The facility uses and will continue to use waste coal as its primary energy source. Colstrip seeks recertification authorizing a ''backup'' waste fuel to be used as the primary energy source for the facility in the event of an interruption in the supply of the facility's current, Commission-approved primary energy source.

NorthWestern Corporation interconnects with the facility, purchases the useful electric output of the facility, and supplies any required supplementary, backup and maintenance power required by the facility.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17690 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC09–166–000]

SLC Pipeline LLC; Notice of Filing

July 20, 2009.

Take notice that on July 7, 2009, SLC Pipeline LLC submitted a request for waiver of the requirement to file the FERC Form No. 6 from December 8, 2008 to December 31, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive E-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: August 19, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17698 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–9–002]

Florida Gas Transmission Company, LLC; Notice of Filing

July 20, 2009.

Take notice that on July 2, 2009, the Florida Department of Transportation (FDOT) made a filing styled as a ''Protest of Florida Department of Transportation and Motion for Order Directing Compliance, Motion for Order to Show Cause, and Request for Expedited Treatment.'' In the filing FDOT alleges that Florida Gas Transmission Company, LLC (FGT) has failed to comply with the Commission's May 3, 2006 and October 10, 2008 orders regarding the abandonment of certain facilities located in Broward County, Florida.[1] Specifically, FDOT asserts that FGT has failed to completely abandon a segment of its 18-inch diameter line between Mileposts 882.61 and 882.95 as authorized by the May 3, 2006 Order and directed by the October 10, 2008 Order. In addition, FDOT requests that the Commission issue an order directing FGT to depressurize, hold in reserve and cease using as a mainline facility a 0.4 mile, 24-inch diameter pipeline segment between Mileposts 882.55 and 882.95. Finally,

[1] *Florida Gas Transmission Co.*, 115 FERC ¶ 61,140 (2006) and *Florida Gas Transmission Co.*, 125 FERC ¶ 61,032 (2008) (May 3, 2006 Order and October 10, 2008 Order, respectively).

FDOT requests that the Commission issue an order directing FGT to show cause as to why it should not be required to abandon and grout this segment of 24-inch diameter pipe between Mileposts 882.55 and 882.95. FDOT's filing is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any person wishing to become a party to this proceeding should, on or before the comment date listed below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 31, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17697 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–442–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

July 17, 2009.

Take notice that on July 9, 2009, Columbia Gas Transmission, LLC (Columbia) 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP09–442–000, an application pursuant to sections 157.205, 157.208(b) and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct, uprate, replace, and abandon certain natural gas facilities and to establish a Maximum Allowable Operating Pressure (MAOP) on an existing pipeline between Marshall County, West Virginia, and Washington County, Pennsylvania, under Columbia's blanket certificate issued in Docket No. CP83–76–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Columbia proposes to abandon and replace approximately 3.9 miles of various pipeline segments with diameters ranging between 2 and 16 inches with a similar 3.9 miles of 16-inch diameter pipeline and appurtenances on Line 1360 between Marshall County, West Virginia, and Washington County, Pennsylvania; replace approximately 0.25 miles of 8-inch diameter pipeline with 0.25 miles of 4-inch pipeline and appurtenances on Line 6001 in Washington County, Pennsylvania; construct approximately 0.45 miles of 2-inch diameter pipeline, to be designated as Line 10367, in Washington County, Pennsylvania; and establish the MAOP on Line 1360 at 400 psig. Columbia states that it would abandon 14 out of service mainline taps which formerly served Columbia Gas of Pennsylvania (CPA), make minor modifications to and relocate certain delivery points to CPA located along Line 1360. Columbia also states that it would relocate the delivery points to CPA from Line 1360 to Line 1758 in Washington County, Pennsylvania. Columbia estimates that the proposed new facilities, abandonments, and modifications would cost an estimated $18,800,000.

Any questions concerning this application may be directed to Fredric J. George, Senior Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273 or via telephone at (304) 357–2359 or by facsimile (304) 357–3206.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

[1] 22 FERC ¶ 62,029 (1983).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17691 Filed 7–23–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0253; FRL–8934–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994; EPA ICR No. 1847.05, OMB Control No. 2060–0390

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR is scheduled to expire on November 30, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 22, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0253 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail: ICR Renewal (2009)—* Emission Guidelines for Large Municipal Waste Combustors

Constructed on or before September 20, 1994 (40 CFR part 60, subpart Cb), Environmental Protection Agency, Mailcode: 2822, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0253. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Walt Stevenson, Sector Policies and Programs Division, Office of Air Quality Planning and Standards, Mail Code D243–01, Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone number: 919–541–5264; fax number: 919–541–5450; e-mail address: *stevenson.walt@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I Access the Docket and/or Submit Comments?

EPA has established a public docket for the ICR under Docket ID No. EPA–HQ–OAR–2009–0253, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from small businesses on examples of specific additional efforts that EPA could make to reduce the paperwork burden for any small businesses that are affected by this collection.

What Should I Consider When I Prepare my Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected Entities: Entities potentially affected by this action are large municipal waste combustors (large MWCs). The SIC codes (and associated North American Industry Classification System (NAICS) codes) for possible respondents affected by the standards are listed in the table below.

Standard	SIC codes	NAICS codes
40 CFR part 60, subpart Cb	9511, Air and Water Resource and Solid Waste Management.	92411, Air and Water Resource and Solid Waste Management.
40 CFR part 62, subpart FFF	4953, Refuse Systems	562213, Solid Waste Combustors and Incinerators.

Title: Emission Guidelines for Large Municipal Waste Combustors Constructed on or before September 20, 1994 (40 CFR part 60, subpart Cb).

ICR numbers: EPA ICR No. 1847.05, OMB Control No. 2060–0390.

ICR status: Currently, the ICR is scheduled to expire on November 30, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The data collection ICR is a renewal of current data collection and reporting requirement for large MWCs subject to 40 CFR part 60, subpart Cb emission guidelines. The subpart Cb guidelines are maximum achievable control technology (MACT) based standards that were adopted in 1995 and were fully implemented by year 2000. The data collected by the ICR are intended to monitor the compliance status of large MWCs subject to these MACT standards. The data collection is a mandatory requirement (Clean Air Act section 114(a)(1)).

Burden Statement: The annual reporting and recordkeeping burden for this collection of information includes: (1) The burden for large MWCs subject to the Federal plan implementing subpart Cb guidelines; (2) the burden for large MWCs subject to approved State plans implementing subpart Cb guidelines; and (3) the burden for State air pollution control offices (designated administrators) to enforce State plans implementing subpart Cb guidelines. The hourly burden estimate for large MWCs subject to the Federal plan level is estimated to average 2,584 hours per year per MWC unit (or 5,514 hours per year per MWC plant), and the burden estimate for large MWCs subject to approved State plans is estimated to average 2,403 hours per unit (or 6,291 hours per year per MWC plant). For designated administrators, the burden is estimated to average 21 hours per year per MWC unit (or 55 hours per plant).

For MWC owners and operators, burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to the designated administrator (or EPA). This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

For delegated administrators (State air pollution control offices), burden means the total time, effort, or financial resources expended to review information provided by MWC owners and operators to comply with the emission guidelines through State plan. This includes the time needed to review semiannual and annual compliance reports; develop and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and providing information; train personnel to review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized as follows:

Estimated total number of potential respondents: The number of respondents for large MWCs subject to the Federal plan is estimated to be nine MWC owners and operators; and the number of respondents for large MWCs subject to approved State plans is estimated to be 55 MWC owners and operators. For designated administrators, the total number of respondents is estimated to be 18 designated administrators. Therefore, the total number of respondents is 82, which comprises 31 privately owned MWC plants, 32 publicly owned MWC plants, and 18 designated administrators.

Frequency of response: Annual, semiannual.

Estimated total average number of responses for each respondent: The overall average number of responses is 229, as follows. For privately owned MWC plants, the total number of annual responses is 78; for publicly owned MWC plants, the total number of annual responses is 74; and for designated administrators, the total number of annual responses is 77.

Estimated total annual burden hours: The estimated total annual burden hours is 394,954, as follows. For privately owned large MWC plants, the total annual burden hours are 190,954. For publicly owned large MWC plants, the total annual burden hours are 200,964. For designated administrators, the total annual burden hours are 3,036.

Estimated total annual costs: The estimated total annual costs are $50,588,150, as follows. This includes an estimated base burden cost of $49,032,950 and additional capital investment/maintenance/operational costs of $1,555,200.

Are There Changes in the Estimates From the Last Approval?

Yes. First, for large MWCs subject to the Federal plan the current ICR the burden estimate (2006 to 2009) is 38,417 hours per year. For the ICR renewal (2009 to 2012) the burden estimate for large MWCs subject to the Federal plan increases to 46,513 hours per year. This increase reflects EPA's updating of burden based on more current inventory and performance data from large MWCs.

Additionally, the ICR includes the burden estimates for large MWCs subject to approved State plans and for designated administrators implementing approved State plans. These burden estimates were not included in the previous ICR. The combined annual labor burden for large MWCs subject to the Federal plan, large MWCs subject to State plans, and burden for designated agencies implementing these regulations is 395,330 hours per year and $49,032,950 per year for labor costs. The combined annual non-labor costs for MWCs subject to the Federal plan and State plans are $1,555,200.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 16, 2009.

Penny E. Lassiter,

Acting Director, Sector Policies and Programs Division.

[FR Doc. E9–17718 Filed 7–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0486; FRL–8427–4]

Cancellation of Pesticides for Non-Payment of Year 2009 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for 370 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 370 of these registrations have been issued within the past few days.

DATES: These cancellations are effective on the date the cancellation order was signed.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0486. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Introduction

Section 4(i)(5) of FIFRA as amended in October 1988 (Public Law 100–532), December 1991 (Public Law 102–237), and again in August 1996 (Public Law 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 194 minor agricultural use registrations at the request of the registrants.

In fiscal year 2009, maintenance fees were collected in one billing cycle. The Pesticide Registration Improvement Renewal Act (PRIRA) was passed by Congress in October 2007. PRIRA authorized the Agency to collect $22 million in maintenance fees in fiscal year 2009. In late November 2008, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 16,170 section 3 registrations, or about 95 percent of the registrations on file in December. Fees have been paid for about 2,146 section 24(c) registrations, or about 84 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 341 section 3 registrations and about 29 section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2010, one year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-Payment

Table 1 lists all of the section 24(c) registrations, and Table 2 lists all of the section 3 registrations which were canceled for non-payment of the 2009 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE

SLN No.	Product name
055431 AZ–05–0008	Silencer T/C Termiticide/insecticide
055431 AZ–06–0007	Times-Up T/C
053575 AZ–08–0007	PB-Rope L
036029 CA–03–0007	Gopher Getter Type 2 Bait By Wilco
060199 CA–08–0001	Amine 4 2,4-D Weed Killer

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

SLN No.	Product name
053575 CA–08–0004	PB-Rope L
059623 CA–76–0155	Clorox
063223 CA–94–0030	Ethylene Agricultural Grade
072500 CO–06–0010	Kaput-D Prairie Dog Bait
053257 FL–88–0028	Sodium Hypochlorite 10.5% By Weight
061667 HI–03–0006	Ag Sanitizer 12.5%
072500 KS–07–0002	Kaput-D Prairie Dog Bait
080289 LA–07–0006	Domark 230ME Fungicide
045728 MA–93–0002	Ferbam Granuflo
070829 MS–05–0005	Clearout 41 Special
070829 MS–06–0007	Gly Star Plus
073220 MS–06–0015	Quali-Pro Chlorpyrifos 4E
072500 NE–07–0002	Kaput-D Prairie Dog Bait
045728 NJ–99–0001	Carbamate WDG Fungicide
072315 NY–07–0006	Sodium Hypochlorite 12.5
075338 NY–08–0012	Cft Legumine Fish Toxicant
055431 OR–06–0004	Times-Up T/C
060217 OR–85–0023	Griffin Direx 4l Herbicide
072500 TX–07–0004	Kaput-D Prairie Dog Bait
055431 TX–07–0010	Times-Up T/C
072500 TX–07–0015	Kaput-D Prairie Dog Bait
000550 UT–01–0003	Masterline Kontrol 30-30 Concentrate for Mosquitoes, Flies and Gnats

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

SLN No.	Product name
072500 WY–07–0007	Kaput-D Pocket Gopher Bait (prairie Dog Bait
081417 WY–08–0003	Dupont Asana XL Insecticide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE

Registration no.	Product Name
000149–00014	Sl–3
000150–00061	An-Tec 110
000192–00118	Dexol Lawn Weed Killer
000491–00166	Selig's Lem-O-Dis
000491–00231	STX 100 Disinfectant Cleaner
000491–00253	Selcol III
000491–00257	Selig's Pin-A-Quat
000506–00174	Tat Ant Trap X
000506–00175	Tat Roach Bait V
000527–00093	F–25
000527–00116	Byquat
000527–00123	F–48
000690–00044	Perkerson's Tri-Chlor Weed Killer
000690–00048	Perkerson's Tri-Ate Weed Killer
000769–00558	Suregard Lime Sulphur Solution 32 BE
000769–00698	SMCP Standard 2,4-D Amine
000769–00852	Pratt Bordo-Mix
000833–00075	Afco 4335 Lf Tops Acid Sanitizer
001001–00073	Ecologix Cockroach Bait
001001–00074	Xanthine and Oxypurinol Manufacturing Use Concentrate
001020–00013	Oakite Detergent-Sanitizer

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
001124–00045	Dutch Spray and Wipe Disinfectant Cleaner
001124–00069	Blu-Lite Germicidal Hospital Type Acid Cleaner
001317–00024	Sterl-Aid Sanitz
001317–00087	Iodu #2
001475–00158	Willert Toilet Tablets
001719–00039	BLP Cop-R-Tox 202 Water Reducible Wood Preservative
001769–00218	D-Algae
001769–00264	Double Quick
001769–00372	Unit Dose Dust
001842–00284	Triangle 455 Soluble Oil
001910–00001	Legear Mange Treatment
001965–00011	Vancide 89
001965–00088	Vancide* Z–Mp
002021–00031	Chlorine Sanitizer Bleach
002630–00013	Ocean Spray Insecticide
002915–00040	Insect Repellent Gel
002915–00055	Fullsan
002915–00066	Spray 'n San II
003090–00123	Sanitized Brand Rb-475 Bacteriostat
003240–00017	Motomco Water Soluble Diphacinone Rodenticide Concentrate Kills Rats
003240–00028	Rampage Mouse Seed
003240–00042	Rampage Rat & Mouse Bait
003377–00053	Sanibrom 101
003377–00054	Sanibrom 202 Algicide
003377–00076	Sanibrom S 50 Algicide
003377–00077	Clear Out
004170–00017	Betco Lemon

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
004170–00038	Glybet
004170–00041	Cide-Bet
005011–00128	Formula F–500
005887–00051	Black Leaf Warf Pellets
005887–00098	Black Leaf Warf Pellets Mouse Killer
006148–00012	Coppertone Bug and Sun
006186–00052	''0007'' Vegetation Killer
006959–00081	Cessco Accudose Instant Fire Ant Control
006959–00098	DDVP 20% Aerosol
007116–20003	Bonus
007173–00206	Generation Pellets Placepacks
007173–00213	Maki Pellets Placepacks
007173–00221	Maki Pellets Bait Packs
007173–00241	Generation Blue Pellets Place Packs
007173–00246	Generation Round Blocks
007173–00250	Maki Bait Station II
007173–00251	Rozol Paraffin Block
007173–00252	Rozol Pellets Place Packs
007173–00256	Metarex 2% Snail and Slug Bait
007537–00002	Hobby's Ready To Use Rat and Mouse Bait
007546–00004	O-San
007643–00006	Nu Way Bleach
007701–00034	Lanscaper Weed Killer & Prepaving Preparation
007946–00024	Tebuject
007946–00029	Dutrex
008155–00018	No. 800 Husky Germicidal Cleaner.
008155–00020	Husky 415
008540–00008	Formula 32

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
008616–00012	Dual Chlor
008730–00056	Hercon Japanese Beetle Food Lure
008730–00069	Hercon Disrupt Micro-Flake LR
008730–00070	Hercon Disrupt III GM
008781–00009	Metz Dairy Sanitizer
009086–00007	Revenge Ant Killer Liquid Bait
009152–00023	CC–20
009386–00018	AMA-3515
009591–00164	Flea Killer for Carpets
009591–00170	Prokill Choice Insecticide
010031–00006	Petersen's Pocket Gopher Bait
010466–00041	Thomson Research Disinfecting Wipes
010679–00010	Sodium Hypochlorite 12.5%
010807–00098	Enviro-40 Detergent/disinfectant
010807–00113	Enviro 125
011220–00006	Tri-Pan 76/24 Preplant Soil Fumigant
011220–00016	Tri-Brom
011515–00037	Deluxe Wintergreen Deodorizer Fungicide Cleaner Disinfectant
011623–00039	Ant & Roach II Residual Spray
011656–00099	First Choice Milsana Bioprotectant
015300–00002	Chemical Treatment CL-2152
017975–00001	Dean's Meat Base Rat and Mouse Bait
021346–00002	M–1 Additive
033560–00021	Pronone 10g
033906–00014	NC–129 60WP
033906–00015	NC–129 75WP
034810–00019	Topps

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
034810–00022	Ready To Use Topps
034810–00029	Dri-Cide-256
035900–00009	General Ionics Model IQ 1240B Bacteriostatic Water Conditioner
035900–00018	General Ionics Model 200,000 Bacteriostatic House Water Filter
035900–00019	General Ionics Model IQ 1030B Bacteriostatic Water Conditioner
036404–00001	Nissin Niclon-70-Granular
036404–00002	Calcium Hypochlorite Granular ''star-Chlon''
037265–00010	Myra-Cyn
037265–00037	Strike Bac Step One Disinfectant
037265–00040	10% Quat Rinse
037265–00043	Strike Bac Spearmint Odor Disinfectant
037731–20001	Sun-Clor
037733–00005	Reddick Bro-Mean C–2r
037733–00006	Reddick Bro-Mean C–33
037733–00007	Reddick Bro-Mean C–O
039104–00001	Aquacell Bacteriostatic Water Treatment Unit
040510–00001	Disinfectant, Food Service
042177–00044	Olympic Algaezone Plus
042177–00075	Regal Brom-A-Gard Tablets 1 for Spas and Hot Tubs
042177–00076	Regal Silver Algaecide
042177–00078	Ez-Clor Lithium Hypochloride
042177–00079	Super Shockwave Shock Treatment for Swimming Pools
042519–00005	Cacodylate 3.1
042519–00006	Dry DSMA
042519–00007	DSMA 81 P

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
042519–00009	Herb-All
042519–00011	2.48 Cacodylate
042519–00012	Magma
042519–00015	DSMA 4 AQ
042519–00016	Dsma 3.6 Aq Plus
043410–00009	Tomato Glo No. 21
044392–00002	MBC-130
044392–00011	MBC 415
044751–00001	NSA Bacteriostatic Water Treatment Unit, Model 50C
044751–00003	NSA Bacteriostatic Water Treatment Unit Model 25I
044751–00004	NSA Bacteriostatic Water Treatment Unit, Model 300H
044751–00005	Mini-Silverator Portable Water Treatment Unit
044751–00007	Mini-Silverator Water Treatment Media
045655–20001	High-Po-Chlor
046183–00001	Sani-Way 6
046276–00001	Quat Shield
046276–00002	Germiquat
046781–00007	Kleenaseptic
046813–00010	C.C.L. House and Garden Insect Killer I
046813–00039	CCL Crawling Insect Killer IX
046813–00064	CCL Multi-Purpose Insecticide Spray
046813–00066	CCL Multi-Purpose Insecticide II
046813–00067	Multi-Purpose Insecticide III
046813–00070	K-G Crack & Crevice Spray
048482–00005	Sanuril 115
049517–00001	Mapco Brand Poly-Foliant Liquid Defoliant

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
049517–00003	Moore Ag Brand Poly-Foliant V Defoliant-Desiccant
049547–00008	Alen 6% Sodium Hypochlorite Bleach Sanitizer
049547–00011	Cloralex Bathroom
049547–20004	Alen Sodium Hypochlorite Bleach Sanitizer
053257–20001	Sodium Hypochlorite Solution 12.5%
053257–20002	Sodium Hypochlorite 10% By Weight
053257–20003	Sodium Hypochlorite 9.2% By Weight
053356–00003	D-Bug-100
053871–00002	Stirrup-M
055272–00008	Micro Flo Co. Basic Copper 53
055272–00009	Microsperse 50 WP
055272–00010	Microsperse Coc 53 WP
055272–00011	Nu-Cop 40DF
055272–00012	COC 40 WDG
055431–00006	Silencer T/C
055431–00007	Double O Six ME Insecticide/miticide
055431–00008	Dead on Target 0.2% Bifenthrin Granules
055431–00009	Bombadir Lawn and Nursery Insecticide/miticide
055431–00010	A-1 Lawn & Greenhouse Insecticide
057101–00001	Chlorine Liquified Gas Under Pressure
057227–00008	Britewood Select Sapstain Control
057242–00004	Gladeamine 3.8 2,4-D Herbicide
058266–00003	Methyl Bromide 99.5%
062575–00003	Biesterfeld Malathion 25
062575–00004	Biesterfeld Malathion 5D

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
062575–00007	Biesterfeld Malathion E.C.
063898–00001	Ryh-86NA
064014–00007	Tree Tech Brand Aliette Injectable
064328–00001	Advance-LF
065458–00001	B.W.A.C.T.
065458–00007	Plato Industries Combo Lure 25/90
065789–00001	Melocide DE-100
065789–00002	Melocide DE-200
066306–00010	Safari Insect Repellent (spray)
066306–00015	Insect Repellent Sunscreen II
066426–00001	Chem Bleach
066426–00002	Chem Bleach Ultra
066465–00002	PMT-100
067425–00020	Ecopco EC
068292–00003	Stretch Fungicide
068527–00001	Echocide Ultrasonic Immersion Additive
068679–00001	Perma-Hull Ultimate
068814–00001	Super Plant Growth Hormone Spray
070227–00006	Mycostat-P2
070246–00001	Ct-100
070303–00001	Alga Strike
070310–00001	Agroneem
070387–00001	Nimbecidine
070467–00003	Biosurf
070799–00009	State Fix ‘‘terg-O-Cide In A Can’’
070810–00001	Auxigro Wp Plant Metabolic Primer
071065–00001	Companion
071096–00008	Snail & Slug Pellets
071096–00012	Lilly/miller Go West Slug Killer

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
071992–00004	Cunap-2W
071992–00005	Cu Nap-1W
072112–00012	Prokoz 015
072112–00013	Prokoz 016
072315–00005	Sodium Hypochlorite 11
072468–00003	Moldwash Wood Preservative/mold Control
072468–00005	Moldwash Pre-Moistened Wipes
072874–00004	Surfguard
072897–00003	Triosyn T50–I Filter
072897–00004	T2 Disinfectant Spray
072947–00002	Viodate 10% Cattle Premix
072947–00003	Viodat CP–10
072994–00001	Silgard Technical
072994–00002	Silgard
073158–00001	Iogold Tm Recharge
073335–00001	Smolder G
073335–00002	Smolder WP
073510–00002	Marketquest One Drop Flea & Tick Control
073876–00001	Fite Bite Permanone Clothing & Gear Insect Repellent
074234–00001	Lmp-102
074322–00007	Hyspray PXT MUP
074322–00008	Hyspray P35 MUP
074655–00018	Spectrum RX7816
074787–00001	Proteku Grape Guard
074981–00001	Storshield ZB 2335
075108–00002	California Red Scale Technical Pheromone
075340–00002	Tie-Gard
075341–00009	Mitc-Fume
075757–00001	SC–40
075799–00001	Verigard Technical

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
075848–00001	Ameri-Klean Whirlpool Pedicurespa One-Step Disinfectant
079442–00001	Exosex-CM
079442–00002	Exosex-TPW
079442–00003	Exosex-OFM
079556–00001	Disodium Octaborate Tetrahydrate
080434–00001	Healthy Solutions 6000
081952–00001	Weed Spray No. 1 Concentrate
081952–00002	Weed Spray No. 1 Ready-To-Use
082075–00001	Ps Disinfecting Surface Wipe(s)
082432–00001	D-Limonene Technical 95%
082653–00001	AMG-X40
082757–00004	Growstar Atrazine 0.45% Plus Fertilizer
082757–00005	Growstar .20% Imidacloprid Plus Turf Fertilizer
082803–00002	Lastcall Cm
082874–00001	LM 1000 AF
082958–00001	E-Z Seal Plus
082971–00001	Bluewater
083028–00007	Happy Gro
083103–00004	Hdh Sopp 435
083222–00017	Ethephon Ag 6
083223–00001	Napropamide 80 MUP
083223–00002	Regatta 80WP Agricultural Herbicide
083223–00003	Regatta 80WP Ornamental Herbicide
083223–00004	Regatta 75WG Agricultural Herbicide
083223–00005	Regatta 75WG Ornamental Herbicide
083223–00006	Regatta 2G Ornamental Herbicide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
083223–00007	Regatta Ornamental Herbicide
083223–00008	Regatta 10G Herbicide
083248–00001	Term-A-Rid 613 Woodstakes
083298–00001	Term-A-Rid 613 Borate Treated Wood Chips
083303–00001	Jymrsa Part A
083303–00002	Jymrsa Part B
083451–00006	Cwt-100m Algicide
083610–00001	Pell-Chlor Drinking Water Disinfecting Tablets
083778–00001	Interceptor
083884–00009	Invasan Dp 300R
083884–00010	Invasan DP 300 TEX
083893–00004	Greenleaf Lawn & Garden Insect Control (.25% Permethrin)
083893–00005	Greenleaf Lawn & Soil Insect Killert
083893–00006	Greenleaf Fire Ant Killer & Preventer Bait
083893–00007	Greenleaf Fast Kill Fire Ant Mound Destrover
083893–00008	Greenleaf St. Augustine Lawn Weed & Feed
083893–00011	Greenleaf Lawn Insect Control (bifenthrin .115%
083893–00013	Greenleaf Lawn Fungus Control
083893–00017	Greenleaf Lawn Fertilizer with Summer Insect Protection
083893–00018	Greenleaf Grub Killer Max
083893–00021	Greenleaf Lawn Insect Killer (.1% Deltamethrin)
083893–00022	Greenleaf Fertilizer with Insect Control

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
083893–00023	Greenleaf Lawn Fertilizer with Crabgrass Preventer
083893–00024	Greenleaf Lawn Fertilizer with Crabgrass Protection
083893–00025	Greenleaf Lawn Fertilizer with Moss Control
083921–00001	Pro Shock
083921–00002	Pro Tabs
083994–00001	Tabard Mosquito and Insect Repellent
084177–00001	Banana Gas 32
084396–00001	M7 Roach Killer Mop-On Insecticide
084396–00002	M5 Boraplus Roach Kill
084396–00003	Weed-Go Non-Select Weed and Grass Killer
084396–00004	Sunbugger #6 Spray Concentrate
084396–00005	Algae-Gon
084396–00006	No-Crab Crabgrass Killer
084396–00007	Select-Kil High Concentrate
084396–00009	Over Grass & Weed Killer
084396–00010	Purge Water Treatment Microbiocide
084396–00011	Algon Algaecide
084396–00013	Super Numb Bug
084396–00014	Weed Out Non Select Weed Killer
084396–00015	Sungro Treat-Turf Herbicide
084396–00016	Sunbugger Water Base Insecticide Spray
084396–00017	Sungro Kitchen and Can Insecticide
084396–00018	Sunbugger III

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
084396–00019	Sunbugger 100 Pyrethrum
084396–00020	Sunbugger Super Fog Food Plant Fogging Insecticide
084396–00021	Sungro Pyreth
084396–00022	Sungro #214 Water-Base Multi-Purpose Insecticide
084396–00023	Sungro Flea-Zy Pet Shampoo
084396–00024	Sunbugger 1–10 Concentrate
084396–00025	Sun-Dust Roach Away
084396–00026	Sungro Permith with Permanone
084396–00027	Sunbugger 8
084396–00029	Perm II
084396–00031	Sungro Water Base Food Plant Fogging Insecticide
084396–00032	Weed-Go II
084396–00033	Ever-Sect III Insecticide Concentrate
084396–00034	Ever-Sect Ornamental and Garden Vegetable Insecticide Spray
084396–00035	Sungro Spray & Dip
084396–00036	Kleen-Weed
084396–00037	Sunbugger 1–5 Insecticide Concentrate
084396–00038	Sunbugger Carpet Dust
084396–00039	Sunbugger Residual Ant & Roach Spray Aqueous II
084396–00040	Sunbugger Flea & Mite Spray
084396–00041	Tomic-Malathion Malathion-Pyrenone Residual Spray
084396–00042	Roach-It

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF 2009 MAINTENANCE FEE—Continued

Registration no.	Product Name
084489–00001	Boric Acid TFG
084804–00001	Verox-QA7575
084804–00002	Verox-3t
084804–00003	Verox-25
084804–00004	Verox-5HM
084804–00005	Verox-8
084804–00006	Verox-CD40
084804–00007	Verox-12.5
084804–00008	Verox-TS31
084804–00009	Verox-QA2525

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks until January 15, 2010, one year after the date on which the fee was due.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

V. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Public Docket, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Product-specific status

inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 13, 2009.

Martha Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. E9–17725 Filed 7–23–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8934–7]

Public Notice of Draft NPDES General Permits for Wastewater Lagoon Systems Located in Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed issuance of NPDES general permits.

SUMMARY: EPA Region 8 is hereby giving notice of its proposed determination to issue six National Pollutant Discharge Elimination System (NPDES) general permits for wastewater lagoon systems that are located in Indian country in Region 8 and that are treating primarily domestic wastewater. The general permits are grouped geographically by State, with the permit coverage being for specified Indian reservations in the State; any land held in trust by the United States for an Indian tribe; and any other areas which are Indian country within the meaning of 18 U.S.C. 1151. The permits for the States of Montana, North Dakota, South Dakota, Utah, and Wyoming are being reissued and replace permits that were issued in 2004. Those permits expire August 16, 2009. The permit for the State of Colorado is being issued for the first time.

The use of wastewater lagoon systems is the most common method of treating municipal wastewater in Indian country in CO, MT, ND, SD, UT and WY. Wastewater lagoon systems are also used to treat domestic wastewater from isolated housing developments, schools, camps, missions, and similar sources of domestic wastewater that are not connected to a municipal sanitary sewer system and do not use septic tank systems. Region 8 wants to continue using general permits instead of individual permits for permitting the discharges from such facilities in order to reduce the Region's administrative burden of issuing separate individual permits. The administrative burden for the regulated sources is expected to be about the same under the general permits as with individual permits (however it will be much quicker to obtain permit coverage with general permits than with individual permits). The discharge requirements would essentially be the same with an individual permit or under the general permit.

DATES: Public comments on this proposal must be received, in writing, on or before August 24, 2009.

ADDRESSES: Public comments should be sent to: Ellen Bonner (8P–W–WW); U.S. Environmental Protection Agency, Region 8; 1595 Wynkoop St.; Denver, CO 80202–1129.

FOR FURTHER INFORMATION CONTACT: The draft permit and the fact sheet for the draft permit are available for download at *http://www.epa.gov/region8/water/wastewater/download.* Additional information may be obtained upon request by calling VelRey Lozano at (303) 312–6128 (or e-mail *lozano.velrey@epa.gov*) or by writing to the address listed above. The complete application and related documents are available by appointment for review and reproduction at the address listed above during the hours of 10 a.m. to 4 p.m. Monday through Friday, Federal holidays excluded. To make an appointment to look at the documents call Ellen Bonner at 303–312–6371 or VelRey Lozano at 303–312–6128.

SUPPLEMENTARY INFORMATION: It is proposed that general permits be issued for discharges from wastewater lagoon systems located in the following areas:

Colorado: COG589### This permit covers the Southern Ute Reservation and the Ute Mountain Reservation, including those portions of the Reservation located in New Mexico and Utah; any land within the State of Colorado held in trust by the United States for an Indian tribe; and any other areas within the State of Colorado which are Indian country within the meaning of 18 U.S.C. 1151.

Montana: MTG589### This permit covers the Blackfeet Indian Reservation of Montana; the Crow Indian Reservation; the Flathead Reservation; the Fort Belknap Reservation of Montana; the Fort Peck Indian Reservation; the Northern Cheyenne Indian Reservation; the Rocky Boy's Reservation; any land within the State of Montana held in trust by the United States for an Indian tribe; and any other areas within the State of Montana which are Indian country within the meaning of 18 U.S.C. 1151.

North Dakota: NDG589### This permit covers the Fort Berthold Reservation; the Spirit Lake Indian Reservation; the Standing Rock Sioux Reservation; the Turtle Mountain Reservation; any land within the State of North Dakota held in trust by the United States for an Indian tribe; and any other areas within the State of North Dakota which are Indian country within the meaning of 18 U.S.C. 1151.

This permit includes that portion of the Standing Rock Sioux Reservation and associated Indian country located within the State of South Dakota. It does not include any land held in trust by the United States for the Sisseton-Wahpeton Oyate or any other Indian country associated with that Tribe, which is covered under general permit SDG589###.

South Dakota: SDG589### This permit covers the Cheyenne River Reservation; Crow Creek Reservation; the Flandreau Santee Sioux Indian Reservation; the Lower Brule Reservation; the Pine Ridge Reservation (including the entire Reservation, which is located in both South Dakota and Nebraska); the Rosebud Sioux Indian Reservation; the Yankton Sioux Reservation; any land within the State of South Dakota held in trust by the United States for an Indian tribe; and any other areas within the State of South Dakota which are Indian country within the meaning of 18 U.S.C. 1151.

This permit includes any land in the State of North Dakota that is held in trust by the United States for the Sisseton-Wahpeton Oyate or any other Indian country associated with that Tribe. It does not include the Standing Rock Sioux Reservation or any associated Indian country, which is covered under general permit NDG589###.

Utah: UTG589### This permit covers the Northwestern Band of Shoshoni Nation of Utah Reservation (Washakie); the Paiute Indian Tribe of Utah Reservation; the Skull Valley Indian Reservation; Indian country lands within the Uintah & Ouray Reservation; any land within the State of Utah held in trust by the United States for an Indian tribe; and any other areas within the State of Utah which are Indian country within the meaning of 18 U.S.C. 1151.

It does not include any portions of the Navajo Nation or the Goshute Reservation, or any land held in trust by the United States for an Indian tribe that is associated with those Reservations, or any other areas which are Indian country within the meaning of 18 U.S.C. 1151 that are associated with those Reservations.

Wyoming: WYG589### This permit covers the Wind River Reservation; any land within the State of Wyoming held in trust by the United States for an Indian tribe; and any other areas within the State of Wyoming which are Indian country within the meaning of 18 U.S.C. 1151.

Coverage under the general permits will be limited to lagoon systems treating primarily domestic wastewater and will include the following three categories: (1) Lagoons where no permission is required before starting to discharge; (2) lagoons where permission is required before starting to discharge; and (3) lagoons that are required to have no discharge. The effluent limitations for lagoons coming under categories 1 and 2 are based on the Federal Secondary Treatment Regulation (40 CFR Part 133) and best professional judgement (BPJ). There are provisions in the general permits for adjusting the effluent limitations on total suspended solids (TSS) and pH in accordance with the provisions of the Secondary Treatment Regulation. If more stringent and/or additional effluent limitations are considered necessary to comply with applicable water quality standards, etc., those limitations may be imposed by written notification to the permittee. Lagoon systems under category 3 are required to have no discharge except in accordance with the bypass provisions of the permit. Self-monitoring requirements and routine inspection requirements are included in the permits. The permits do not authorize the discharge of wastewater from land application sites, but they do require that the land application of wastewater from the lagoon systems be done in accordance with a written operational plan for the land application of the wastewater. The objectives of the operational plan are to minimize the potential for the discharge of wastewater from the land application site and to avoid applying excessive amounts of nitrogen to the land application site.

With the exception of the Flathead Indian Reservation, the Fort Peck Indian Reservation, Northern Cheyenne Indian Reservation, and the Ute Mountain Indian Reservation, where the Tribes have Clean Water Act section 401(a)(1) certification authority, EPA intends to certify that the permits comply with the applicable provisions of the Clean Water Act as long as the permittees comply with all permit conditions. The permits will be issued for a period of five years, with the permit effective date and expiration date determined at the time of issuance.

Other Legal Requirements

Economic Impact (Executive Order 12866): EPA has determined that the issuance of this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 501, *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' defined to be the same as ''rules'' subject to the Regulatory Flexibility Act (RFA)) on tribal, state, local governments and the private sector. Since the permit proposed today is an adjudication, it is not subject to the RFA and is therefore not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251, *et seq.*

Dated: July 17, 2009.

Debra H. Thomas,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. E9–17708 Filed 7–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8595–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 07/13/2009 Through 07/17/2009 Pursuant to 40 CFR 1506.9.

EIS No. 20090244, Draft EIS, BLM, CA, Santa Ana River Wash Land Use Plan Amendment and Land Exchange Project, Proposes to Exchange Land Located within Upper Santa Ana River Wash, for District-Owned Lands in San Bernardino County, CA, Comment Period Ends: 09/08/2009, Contact: Michael Bennett 760–833–7139.

EIS No. 20090245, Draft EIS, FHW, FL, Interstate 395 (I–395) Development and Environment Study Project, From I–95 to West Channel Bridges of the MacArthur Causeway at Biscayne Bay, City of Miami, Miami-Dade County, FL, *Comment Period Ends:* 09/08/2009, Contact: Linda Anderson 850–942–9650 Ext 3053.

EIS No. 20090246, Draft EIS, AFS, CA, Eddy Gulch Late-Successional Reserve Fuels/Habitat Protection Project, To Protect Late-Successional Habitat used by the Northern Spotted Owl and Other Late-Successional-Dependent Species, Salmon River and Scott River Ranger District, Klamath National Forest, Siskiyou County, CA, Comment Period Ends: 09/08/2009, Contact: Connie Hendryx 530–468–1281.

EIS No. 20090247, Draft EIS, NOA, 00, Comprehensive Ecosystem-Base Amendment 1 (CE–BA 1) for the South Atlantic Region, Implementation,, Comment Period Ends: 09/08/2009, Contact: Roy E. Crabtree, PhD 727–824–5305.

EIS No. 20090248, Final EIS, AFS, OR, Farley Vegetation Management Project, To Conduct Timber Harvest Commercial and Non-Commercial Thinning, Fuels Treatment Prescribed Burning and Reforestation, Desolation Creek, North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR, Wait Period Ends: 08/24/2009, Contact: Janel McCurdy 541–278–3869.

EIS No. 20090249, Draft EIS, NOA, 00, Amendment 3 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS), Fishery Management Plan, To Implement Management Measures that Prevent Overfishing and Rebuild Overfished Stocks, Implementation, Comment Period Ends: 09/21/2009, Contact: Margo Schulze-Haugen 301–713–2347.

Amended Notices

EIS No. 20090134, Draft EIS, COE, CA, Newhall Ranch Resource Management and Development Plan (RMDP) and the Spineflower Conservation Plan (SCP), Implementation, Portion of Santa Clara River Valley, Los Angeles County, CA, Comment Period Ends: 08/25/2009, Contact: Aaron O. Allen 805–585–2154.

Revision to FR Notice Published 05/01/2009: Extending Comment Period from 06/29/2009 to 08/25/2009.

EIS No. 20090177, Draft EIS, AFS, CA, Lassen National Forest, Motorized

Travel Management Plan, Implementation, Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama Counties, CA, Comment Period Ends: 07/31/2009, Contact: Christopher O'Brien 530–257–2151. Revision of FR Notice Published on 06/05/2009; Comment Review Period extended from 7/20/2009 to 7/31/2009.

EIS No. 20090181, Draft EIS, AFS, CA, Lower Trinity and Mad River Motorized Travel Management, Proposed to Prohibit Cross-County Motor Vehicle Travel Off Designated National Forest Transportation System (NFTS) Roads and Motorized Trails, Six River National Forest, CA, Comment Period Ends: 08/04/2009, Contact: Leslie Burkhart 707–441–3520 Revision to FR Notice Published 06/05/2009: Extending Comment Period from 07/20/2009 to 08/04/2009.

Dated: July 21, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–17703 Filed 7–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8595–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments Availability of EPA Comments Prepared Pursuant to the Environmental Review Process (ERP), Under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as Amended

Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090011, ERP No. D–SFW–K99041–CA, Tehachapi Uplands Multiple Species Habitat Conservation Plan (TUMSHCP), Propose Issuance of a 50-Year Incidental Take Permit for 27 Federal- and State-Listed and Unlisted Species, Kern County, CA.

Summary: EPA expressed environmental concerns about impacts to aquatic resources and to California condor. EPA recommended additional information for air quality, induced growth, transportation, visual and cumulative impacts. Rating EC2.

EIS No. 20090091, ERP No. D–FRC–D05126–VA, Smith Mountain Pumped Storage Project (FERC No. 2210–169). Application for Hydropower License to continue Operating the 636-megawatt Pumped Storage Project, Roanoke River, Bedford, Campbell, Franklin and Pittsylvania Counties, VA.

Summary: EPA expressed environmental concerns about water temperature changes, the adaptive management process, and wetland impacts, and requested that a fish passage option be explored, and an environmental monitor be used. Rating EC2.

EIS No. 20090126, ERP No. D–FHW–E40825–NC, Monroe Connector/Bypass Project, Construction from Near I–485 at US &4 to US 74 between the Tons of Wingate and Marshville, Funding and US COE 404 Permit, North Carolina Turnpike Authority, Meckleburg and Union Counties, NC.

Summary: EPA expressed environmental objections about air and water quality impacts. EPA believes that this project will contribute additional VMTs and increased emissions and ultimately make achievement of the NAAQS less likely. Jurisdictional waters of the U.S. are currently impaired in the project study area from construction and related activities. Rating EO2.

EIS No. 20090142, ERP No. D–NPS–K61170–CA, Yosemite National Park Project, Construction of Yosemite Institute Environment Education Campus, Implementation, Mariposa County, CA.

Summary: EPA does not object to the proposed project, but requested additional information regarding applicability of Clean Air Act general conformity. Rating LO.

EIS No. 20090144, ERP No. D–GSA–K40271–CA, San Ysidro Land Port of Entry (LPOE) Improvement Project, Propose the Configuration and Expansion of the Existing (LPOE), San Ysidro, CA.

Summary: EPA expressed environmental concerns about air quality impacts and recommended additional operational air quality analysis and measures to reduce congestion and emissions, including anti-idling methods. EPA also recommended environmental justice analysis of port facility users and improvements to intermodal accessibility. Rating EC2.

EIS No. 20090155, ERP No. D–BIA–C65008–NY, Cayuga Indian Nation of New York Conveyance of Land into Trust Project, Approval of a 125 + Acre Fee-To-Trust Property Transfer of Seven Separate Parcel located in the Village of Union Springs and Town of Springport and Montezuma in Cayuga County and the Town of Seneca Falls in Seneca County, NY.

Summary: EPA expressed environmental concerns about the traffic analysis and related air quality impacts. Rating EC2.

EIS No. 20090160, ERP No. D–AFS–F65075–MN, Border Project, Proposing Forest Vegetation Management and Related Transportation System Activities, LaCroix Ranger District, Superior National Forest, St. Louis County, MN.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090086, ERP No. DA–GSA–D81027–MD, U.S. Food and Drug Administration (FDA) Headquarters Consolidation, Master Plan Update, Federal Research Center at White Oak, Silver Spring, Montgomery County, MD.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20090150, ERP No. DR–FHW–F40445–IN, I–69 Evansville to Indianapolis, Indiana Project, Section 2, Revised to Update the Stream Impacts, Oakland City to Washington, (IN–64 to US 50), Gibson, Pike and Daviess Counties, IN.

Summary: While EPA has no objection to the proposed action, it requested clarification of mitigation measures for wetlands, streams, upland forests, and clean diesel construction practices. Rating LO.

EIS No. 20090166, ERP No. DS–COE–G34030–LA, Calcasieu River and Pass, Louisiana Dredged Material Management Plan, Implementation, Calcasieu Ship Channel, Port of Lake Charles, Calcasieu and Cameron Parishes, LA.

Summary: EPA does not object to the preferred alternative. Rating LO.

Final EISs

EIS No. 20090049, ERP No. F–COE–K36149–CA, San Diego Creek Watershed Special Area Management Plan/Watershed Streambed Alteration Agreement Process (SAMP/WSAA Process), Protecting and Enhancing Aquatic Resource and Permitting Reasonable Economic Development, Orange County, CA.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object with the proposed action.

EIS No. 20090143, ERP No. F–FRC–L03014–OR, Jordan Cove Energy and Pacific Connector Gas Pipeline Project, Construction and Operation, Liquefied Natural Gas (LNG) Import Terminal and Natural Gas Pipeline Facilities, Coos, Douglas, Jackson and Klamath Counties, OR.

Summary: EPA expressed environmental concerns about the capacity of the ocean disposal site selected to receive maintenance dredge materials.

EIS No. 20090174, ERP No. F–FHW–K50015–CA, Schuyler Heim Bridge Replacement and SR–47 Expressway Improvement Project, New Information related to Health Risk Associated with Air Toxics, Funding, U.S. Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits, Ports of Long Beach and Los Angeles, Los Angeles County, CA.

Summary: EPA continues to have environmental concerns about environmental justice impacts and the inconsistent information on mobile source air toxics.

EIS No. 20090180, ERP No. F–STA–F03012–00, Alberta Clipper Pipeline Project, Application for a Presidential Permit for Construction, Operation and Maintenance of Facilities in ND, MN and WI.

Summary: EPA continues to have environmental concerns about wetland and stream crossing impacts.

EIS No. 20090203, ERP No. F–NOA–E91021–00, Snapper Grouper Amendment 15B, Fishery Management Plan, Updated Information on the Economic Analysis for the Bag Limit Sales Provision, Update Management Reference Point for Golden Tilefish (Lopholatilus chamaeleonticeps); Define Allocations for Snowy Grouper (Epinephelus niveatus) and Red Porgy (Pagrus pagrus), NC, SC, FL and GA.

Summary: EPA does not object to the proposed action.

Dated: July 21, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–17706 Filed 7–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0516; FRL–8428–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review Evaluation of Updated Standard Operating Procedures for Residential Exposure Assessment.

DATES: The meeting will be held on October 6 – 9, 2009, from approximately 8:30 a.m. to 5 p.m.

Comments. The Agency encourages that written comments be submitted by September 22, 2009 and requests for oral comments be submitted by September 29, 2009. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after September 22, 2009 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before August 5, 2009.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard, (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0516, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail.* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery.* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2009–0516. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as *ad hoc* members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564-8498; fax number: (202) 564-8382; e-mail address: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2009–0516 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than September 22, 2009, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after September 22, 2009 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than September 29, 2009, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Pesticide exposure, risk assessment, industrial hygiene, general statistics, and exposure modeling. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 5, 2009. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure,

as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The Standard Operating Procedures for Residential Exposure Assessment (i.e., Residential SOPs) is a set of standard instructions for estimating exposure resulting from various non-occupational pesticide uses including lawn and garden care, foggers, and pet treatments. Developed by the Health Effects Division of EPA's Office of Pesticide Programs (EPA/OPP/HED) in the 1990s pursuant to the Food Quality Protection Act (FQPA) requiring consideration of non-dietary non-occupational exposures for the purposes of aggregate pesticide exposure estimates, they were first presented to the FIFRA SAP in 1997 (*http://www.epa.gov/scipoly/sap/meetings/1997/september/finalsep.htm#2*) with additional SAP review in 1999 (*http://www.epa.gov/scipoly/sap/meetings/1999/092199_mtg.htm*), and have since been utilized with various updates to data sources and methodologies, including a supplemental document in 2001 (Exposure Policy #12: Recommended Revisions to the Standard Operating Procedures (SOPs) for Residential Exposure Assessment. February 22, 2001 (EPA/OPP/HED)).

Recently, the Agency has undertaken a substantial revision to the Residential SOPs to: Incorporate interim updates and revisions since their inception; research, incorporate, and statistically analyze more current and reliable data for the purposes of informing standard algorithm inputs (i.e., point estimates and distributions for deterministic and probabilistic exposure assessments, respectively); and, update and/or revise standard exposure assessment methodologies.

EPA's goal is to have a set of instructions that include transparent methodologies and data inputs that guide the assessment of non-occupational pesticide exposure in a straightforward and user-friendly fashion. The Agency is seeking comment from the Panel on the adequacy of the exposure assessment methodologies and algorithms; the applicability, analysis, and use of available pesticide use information, activity pattern information, and pesticide exposure data; the process by which inputs are selected for use in residential pesticide exposure assessments; and the overall clarity, transparency, and utility of the SOPs.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by early September. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 16, 2009.

Steven M. Knott,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E9–17710 Filed 7–23–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request; 3064–0077

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it is submitting to OMB a request for OMB review and approval of the renewal of the information collection system described below.

DATES: Comments must be submitted on or before August 24, 2009.

ADDRESSES: Interested parties are invited to submit written comments on the collection of information entitled:

Suspicious Activity Report by Depository Institutions (3064–0077).

All comments should refer to the name and number of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federalnotices.html.*
- *E-mail: comments@fdic.gov.*

Include the name and number of the collection in the subject line of the message.

- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Federal Deposit Insurance Corporation, F–1072, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently Approved Collection of Information

Title: Suspicious Activity Report by Depository Institutions (SAR). The FDIC is renewing the information collection covered under Part 353—Suspicious Activity Reports, 12 CFR Part 353.

OMB Number: 3064–0077.

Form Number: 6710/06.

Current Action: The FDIC proposes to renew, without revision, the currently approved form.[1]

Type of Review: Renewal of a currently approved collection.

Affected Public: Business, for profit institutions, and non-profit institutions.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5148.

Estimated Total Annual Responses: 133,151.

Estimated Time per Response: 1 hour.

Total Annual Burden: 133,151 hours.

General Description of Collection: In 1985, the Banking Supervisory Agencies issued procedures to be used by banks and certain other financial institutions operating in the United States to report known or suspected criminal activities to the appropriate law enforcement and Banking Supervisory Agencies. Beginning in 1994, the Banking Supervisory Agencies and the FinCEN redesigned the reporting process resulting in the Suspicious Activity Report, which became effective in April 1996. The report is authorized by the following regulations: 31 CFR 103.18 (FinCEN); 12 CFR 21.11 (OCC); 12 CFR 563.180 (OTS); 12 CFR 208.62(c), 211.5(k), 211.24(f), and 225.4(f) (Board); 12 CFR 353.3 (FDIC); 12 CFR 748.1 (NCUA). The regulations were issued under the authority contained in the following statutes: 31 U.S.C. 5318(g) (FinCEN); 12 U.S.C. 93a, 1818, 1881–84, 3401–22, 31 U.S.C. 5318 (OCC); 12 U.S.C. 1463 and 1464 (OTS); 12 U.S.C. 248(a)(1), 625, 1818, 1844(c), 3105(c)(2) and 3106(a) (Board); 12 U.S.C. 1818–1820 (FDIC); 12 U.S.C. 1766(a), 1789(a) (NCUA).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget control number. Records required to be retained under the Bank Secrecy Act and these regulations issued by the Banking Supervisory Agencies must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comment

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 21st day of July 2009.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–17724 Filed 7–23–09; 8:45 am]

BILLING CODE 6714–01–P

[1] The form being renewed was approved by OMB effective June 30, 2007. On May 1, 2007, FinCEN published a **Federal Register** notice (72 FR 23891) (*http://www.fincen.gov/statutes_regs/frn/pdf/sar_fr_notice.pdf*) announcing the delayed implementation of the revised Suspicious Activity Report (SAR) forms. The revised SAR forms that support joint filings were originally scheduled to become effective on June 30, 2007 and mandatory on December 31, 2007. The delay in implementation does not impact ongoing suspicious activity reporting. Filers should continue to use the July 2003 form until further notice (*http://www.fincen.gov/forms/files/f9022-47_sar-di.pdf*). FinCEN will establish new dates for using the revised SAR forms in a future notice. Depository institutions will be provided ample lead time to incorporate the approved version.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E9–17111 published on pages 35190 anbd 35191 of the issue for Monday, July 20, 2009.

Under the Federal Reserve Bank of Kansas City heading, the entry for Central Bancorp, Inc., Colorado Springs, Colorado, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Central Bancorp, Inc., Colorado Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Stockmens Bank of Clayton, Clayton, New Mexico, and The Citizens National Bank of Akron, Akron, Colorado.

Applicant also has applied to retain voting shares of Elite Properties of America II, Inc.; CB&T Mortgage, LLC; and CB&T Wealth Management, all of Colorado Springs, Colorado; Corundum Trust Company, Sioux Falls, South Dakota, and thereby engage in, extending credit and servicing of loans, pursuant to section 225.28(b)(1); financial and investment advisory activities, pursuant to sections 225.28(b)(6)(i) and (b)(6)(v); and trust activities, pursuant to section 225.28(b)(5) of Regulation Y.

Comments on this application must be received by August 13, 2009.

Board of Governors of the Federal Reserve System, July 21, 2009.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E9–17685 Filed 7–23–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Piedmont Community Bank Holdings, Inc., Chapel Hill, North Carolina; to become a bank holding company by acquiring up to 62 percent of the voting securities of VantageSouth Bank, Burlington, North Carolina.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Community Trust Financial Corporation, Ruston, Louisiana; to merge with First Louisiana Bancshares, Inc., and indirectly acquire First Louisiana Bank, both of Shreveport, Louisiana.

Board of Governors of the Federal Reserve System, July 21, 2009.

Margaret McCloskey Shanks

Associate Secretary of the Board.

[FR Doc. E9–17686 Filed 7–23–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[Docket No. 9310]

Aspen Technology, Inc.; Analysis to Aid Public Comment on Proposed Agreement Containing Order to Show Cause and Order Modifying Order

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before August 5, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Aspen Technology, Inc., Docket No. 9310'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-AspenTech/*) Tech (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-AspenTech/*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Aspen Technology, Inc., Docket No. 9310 reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

[1]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Daniel P. Ducore, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2526.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 6, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/2009/07/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Order to Show Cause and Order Modifying Order (''Proposed Modifying Order'' or ''Order'') with Aspen Technology, Inc. (''Aspen'') to resolve the Commission's investigation related to Aspen's compliance with its obligations under the Decision and Order issued in this matter on December 20, 2004 (''Original Order'').

The Original Order required, among other things, that Aspen divest the software product HYSYS and certain related assets Aspen had obtained through its acquisition of Hyprotech, Ltd. (''Hyprotech assets''). Under the terms of the Original Order, Aspen was required to divest the Hyprotech assets on or before March 28, 2005, to an acquirer approved by the Commission. On December 20, 2004, the Commission approved Honeywell International Inc. (''Honeywell'') as the acquirer of the Hyprotech assets.

Following entry of the Original Order in 2004, issues arose concerning the scope and timeliness of Aspen's compliance. After a full investigation, the Commission found reason to believe that Aspen had not complied fully with its obligations; the Commission notified the Department of Justice of its intention to file an enforcement action under Section 5(*l*) of the FTC Act. The Commission has since determined in its discretion that, rather than pursuing the enforcement action, it is in the public interest to reopen this proceeding pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 CFR § 3.72(b), and modify the Original Order by adding provisions intended to remediate the inability of the Original Order to achieve fully its stated purpose as a result of actions by Aspen. Although Aspen denies these allegations, it has consented to entry of the Proposed Modifying Order.

The Proposed Modifying Order revises the Original Order by requiring Aspen to maintain the capability to save customer case files containing the Input Variables created in Aspen HYSYS, Aspen HYSYS Dynamics, and certain heat exchange simulation software products into a Portable Format, as defined in the Order. The Order further requires Aspen to provide Honeywell with certain technical information to enable Honeywell to utilize the Portable Format. These provisions are intended to enable Honeywell to compete with Aspen as intended by the Original Order.

The Proposed Modifying Order has been placed on the public record for 30 days for interested persons to comment. Comments received during this 30 day period will become part of the public record. After 30 days, the Commission will again review the Proposed Modifying Order and the comments received and will decide whether it should withdraw the Proposed Modifying Order or make the Proposed Modifying Order final.

1. The Respondent

Aspen, headquartered in Burlington, Massachusetts, is a developer and worldwide supplier of simulation software. Its products are used by firms in the refining, oil and gas, petrochemical, chemical, pharmaceutical, and other process manufacturing industries and by engineering and construction companies that support those industries.

2. The Proposed Modifying Order

The Proposed Modifying Order requires Aspen to complete and maintain a Portable Format Export/Import Feature for Aspen HYSYS 6.0, Aspen HYSYS 7.1 and all current and future versions of Aspen HYSYS, Aspen HYSYS Dynamics, and the covered heat exchange simulation software products until December 31, 2014, or if Honeywell exercises the option permitted it in the Order, until December 31, 2016. The Order defines a Portable Format Export/Import Feature as the provision for the export into and import from a Portable Format of Input Variables. The Order further defines a Portable Format as a structured file format that is both human and machine-readable and defines an Input Variable as all user input data related to calculations and basic user input data related to HYSYS flowsheet block and stream graphical layouts. The current Portable Format generally used by Aspen is an XML format.

The Proposed Modifying Order also requires Aspen to provide Honeywell with certain Technical Documentation, which is defined as tags used to identify the user input variable, data types of the tags (*e.g.*, integer, real, Boolean, text, choice), valid choices for choice data types, and a definition of the meaning of the tags. The Technical Information will provide information to Honeywell that is intended to allow it to develop the ability to import Input Variables written by Aspen to the Portable Format and to export those Input Variables into the Portable Format. Under the terms of the Proposed Modifying Order, Dr. Thomas L. Teague is appointed as Monitor. The Monitor will Validate the Portable Format Export/Import Feature in the relevant software products, review the completeness of Technical Documentation provided by Aspen to Honeywell, and take other steps to monitor Aspen's compliance with its obligations under the Order, including reporting on a regular basis to the Commission. The Order requires Aspen to grant and transfer to the Monitor all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities.

To ensure the Portable Format Export/Import Feature in HYSYS 2006.0 and HYSYS 7.1 is complete, the Order requires Aspen to update HYSYS 2006.0 to complete the Portable Format Export/Import Feature . The Monitor will Validate the HYSYS 2006.0 Update, to verify that the Portable Format Export/Import Feature is complete and functional, by verifying that (i) as to the Input Variables common to Aspen HYSYS and Aspen HYSYS Dynamics versions 7.1 and HYSYS 2006.0 Update, the native input report (.dmp) text files for each case in a HYSYS Portability Test Suite are shown to be substantially

the same as the input report (.dmp) files that are produced when the Portable Format file is exported from Aspen HYSYS version 7.1 and Aspen HYSYS Dynamics version 7.1, and then imported as a new case in HYSYS 2006.0 Update, and (ii) running HYSYS 2006.0 Update in calculation mode, each case in the HYSYS Portability Test Suite demonstrates that the calculation results from the original case file and the calculation results from the exported/imported case file are substantially the same. The HYSYS Portability Suite is a group of test cases provided by Aspen and reviewed by the Monitor that tests the capability of the Portable Format Export/Import Feature to import and export all Input Variables. The Order requires Aspen to fix any errors in the Portable Format Export/Import of the HYSYS 2006.0 Update discovered by the Monitor during the Validation process.

To facilitate Honeywell's development of the capability to import cases exported by Aspen using the Portable Format Export/Import Feature, the Proposed Modifying Order requires Aspen to provide Honeywell with the HYSYS 2006.0 Update, including object and source code, the HYSYS Portability Test Suite, and Technical Documentation of any modifications to the Portable Format or Input Variables between the HYSYS 2006.0 Update and the versions of HYSYS 7.1 or HYSYS Dynamics 7.1 current as of April 30, 2009.

To ensure all HTFS+ products have functional Portable Format Export/Import Features, Aspen is required to provide the Monitor and Honeywell with Technical Documentation of the HTFS+ Portable Format and an HTFS+ Test Suite. The Monitor will review both the Technical Documentation and HTFS+ Test Suite and require any necessary modification.

During the term of the Proposed Modifying Order, Aspen is required to take certain actions before releasing any new version of Aspen HYSYS, Aspen HYSYS Dynamics, or of the covered heat exchange software products. Aspen is required to provide the Monitor with a beta version of planned new releases of these products for review and Validation. The Monitor must be able to Validate new versions of Aspen HYSYS and Aspen HYSYS Dynamics by verifying (i) that native input report (.dmp) text files in the new release are shown to be substantially the same as the input report (.dmp) files that are produced when the Portable Format file is exported and then imported as a new case in the new release, (ii) as to Input Variables common to the new release and HYSYS 2006.0 Update, that the native input report (.dmp) text files for each case in the HYSYS Portability Test Suite are shown to be substantially the same as the input report (.dmp) files that are produced when the Portable Format file is exported from the new release and then imported as a new case in HYSYS 2006.0 Update, and (iii) the Portable Format Export/Import Feature is used in the new release in a substantially similar manner as such feature is used in HYSYS 2006.0 Update. Aspen cannot release the new version until the Monitor completes Validation of the product, provided that the Monitor completes such Validation in a timely fashion; otherwise, the Validation may be completed post-release.

Aspen is also required to provide the Monitor with Technical Documentation of Portable Format tags for all new Input Variables in the proposed new release, which the Monitor shall review for completeness. Aspen must also provide Honeywell with a copy of the Technical Documentation two weeks prior to publishing the new release. The Documentation provided to Honeywell must either incorporate revisions to the Technical Documentation required by the Monitor or provide such revisions as an update to the documentation, depending on when the Monitor informs Aspen of the need for such revisions.

If, during the term of the Proposed Modifying Order, Aspen replaces XML as the Portable Format used in Aspen HYSYS, Aspen HYSYS Dynamics, or the covered heat exchanges simulation software products, the Monitor must determine the appropriate procedure for Validating releases using the new Portable Format and providing Technical Documentation to Honeywell. Aspen cannot ship a new release of Aspen HYSYS, Aspen HYSYS Dynamics, or the covered heat exchanges simulation software products until two weeks after it has provided to Honeywell all Technical Documentation required by the Monitor.

By direction of the Commission, with Commissioner J. Thomas Rosch recused.

Donald S. Clark

Secretary

[FR Doc. E9–17704 Filed 7–23–09: 7:17 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Application for Participation in the IHS Scholarship Program

AGENCY: Indian Health Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires to provide a 60-days advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–0006, ''Application for Participation in the IHS Scholarship Program.'' *Type of Information Collection Request:* Three year extension, with change of currently approved information collection, 0917–0006, ''Application for Participation in the IHS Scholarship Program.'' *Form Number(s):* IHS–856, 856–2 through 856–24, IHS–815, IHS–816, IHS–817, and JHS–818. Reporting formats are contained in an IHS Scholarship Program application booklet. *Need and Use of Information Collection:* The IHS Scholarship Branch needs this information for program administration and uses the information to solicit, process, and award IHS Pre-graduate, Preparatory, and/or Health Professions Scholarship grantees and monitor the academic performance of awardees, to place awardees at payback sites, and for awardees to request additional program information. The IHS Scholarship Program is streamlining the application to reduce the time needed by applicants to complete and provide the information and plans on using information technology to make the application electronically available on the Internet. *Affected Public:* Individuals, not-for-profit institutions and State, local or Tribal Governments. *Type of Respondents:* Students pursuing health care professions.

The table below provides: Types of data collection instruments; Estimated number of respondents; Number of responses per respondent; Annual number of responses; Average burden hour per response; and Total annual burden hours.

Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response*	Annual burden hours
Scholarship Application Bubble Sheet (IHS–856)	1,500	1	1,500	1.00 (60 min)	1,500
Application Checklist (IHS–856–2)	1,500	1	1,500	0.13 (8 min) ..	195
Faculty/Employer Evaluation (IHS–856–3)	1,500	2	3,000	0.83 (50 min)	2,490
Narrative Statements (IHS–856–4)	1,500	1	1,500	0.75 (45 min)	1,125
Delinquent Federal Debt (IHS–856–5)	1,500	1	1,500	0.13 (8 min) ..	195
Course Curriculum Verification (IHS–856–6)	1,500	1	1,500	0.70 (42 min)	1,050
Verification of Acceptance or Decline of Award (IHS–856–7).	650	1	650	0.13 (8 min) ..	84
Recipient's Initial Program Progress Report (IHS–856–8).	1,300	1	1,300	0.13 (8 min) ..	169
Notification of Academic Problem (IHS–856–9)	50	1	50	0.13 (8 min) ..	6
Change of Status (IHS–856–10)	50	1	50	0.45 (25 min)	6
Request for Approval of Deferment (IHS–856–11)	20	1	20	0.13 (8 min) ..	3
Preferred Placement (IHS–856–12)	200	1	200	0.75 (45 min)	150
Notice of Impending Graduation (IHS–856–13)	250	1	250	0.17 (10 min)	43
Notification of Deferment Program (IHS–856–14)	20	1	20	0.13 (8 min) ..	3
Placement Update (IHS–856–15)	250	1	250	0.18 (11 min)	45
Annual Status Report (IHS–856–16)	250	1	250	0.25 (15 min)	63
Extem Site Preference Request (IHS–856–17)	150	1	150	0.13 (8 min) ..	20
Request for Extern Travel Reimbursement (IHS–856–18).	150	1	150	0.10 (6 min) ..	15
Lost Stipend Payment (IHS–856–19)	100	1	100	0.13 (8 min) ..	13
Request for Tutorial Assistance (IHS–856–20)	217	1	217	0.13 (8 min) ..	28
Summer School Request (IHS–856–21)	193	1	193	0.10 (6 min) ..	19
Change of Name or Address (IHS–856–22)	20	1	20	0.13 (8 min) ..	6
Request for Credit Validation (IHS–856–23)	150	1	150	0.10 (6 min) ..	20
Faculty/Advisor Evaluation (IHS–856–24)	1,500	2	3,000	0.83 (50 min)	2,490
Acknowledgment Card (IHS–815)	1,500	1	1,500	0.03 (2 min) ..	45
Address Change Notice (IHS–816)	25	1	25	0.02 (1 min) ..	25
Scholarship Program Agreement (IHS–817)	850	1	850	0.05 (3 min) ..	43
Health Professions Contract (IHS–818)	850	1	850	0.05 (3 min) ..	33
Total	17,745				9,884

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD, 20852, call non-toll free (301) 443–7899, send via facsimile to (301) 443–9879, or send your e-mail requests, comments, and return address to: *betty.gould@ihs.gov. Comment Due Date:* Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: July 17, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–17454 Filed 7–23–09; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Application for the Emergency Form for CSBG/ARRA Expenditure Report.

OMB No.: New Collection.

Description: On February 17 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act provided for $1 billion in additional funds to the Community Services Block Grant (CSBG) program for Federal Fiscal Year 2009; however the grant period runs through FY 2010. As with regularly appropriated CSBG funds, Recovery Act funds may be used for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient.

To be in compliance with Recovery Act (Pub. L. 111–5) Section 1512(c)(1) through (B) a backup sheet was created to identify the various activities that make up the total Federal share of outlays reported on the 269A Report line 10(a). The CSBG/ARPA Fund provides resources to States, Territories, and Tribes to support work and families during this difficult economic period.

We plan to issue a backup sheet for the 269A Report with instructions for jurisdictions to complete; which would provide detail information to support

line 10(a) of the aforementioned document.

Failure to collect this data would compromise ACF's ability to monitor expenditure patterns by the grantees.

Documentation maintenance on financial reporting for the CSBG Fund is governed by 45 CFR 96.30.

Respondents: State, Territory, and Tribal agencies administering the Community Service Block Grant (CSBG) Program Fund.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CSBG/ARRA	103	4	4	1,648

Estimated Total Annual Burden Hours: 1,648.

Additional Information:

ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by July 31, 2009. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Janean Chambers at (202) 690–6547.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, FAX (202) 395–5806.

Dated: July 16, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–17462 Filed 7–23–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Application for the Emergency Form for CSBG/ARRA Expenditure Report.

OMB No.: New Collection.

Description: On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act provided for $1 billion in additional funds to the Community Services Block Grant (CSBG) program for Federal Fiscal Year 2009; however, the grant period runs through FY 2010. As with regularly appropriated CSBG funds, Recovery Act funds may be used for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient.

To be in compliance with Recovery Act (Pub. L. 111–5) section 1512(c)(1) through (B), a backup sheet was created to identify the various activities that make up the total Federal share of outlays reported on the 269A Report line 10(a). The CSBG/ARRA Fund provides resources to States, Territories, and Tribes to support work and families during this difficult economic period. We plan to issue a backup sheet for the 269A Report with instructions for jurisdictions to complete, which would provide detailed information to support line 10(a) of the aforementioned document.

Failure to collect this data would compromise ACF's ability to monitor expenditure patterns by the grantees.

Documentation maintenance on financial reporting for the CSBG Fund is governed by 45 CFR 96.30.

Respondents: State, Territory, and Tribal agencies administering the Community Service Block Grant (CSBG) Program Fund.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CSBG/ARRA Plan	103	4	4	1,648

Estimated Total Annual Burden Hours: 1,648

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 20, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–17561 Filed 7–23–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NHLBI Health Information Center's Revolving Customer Satisfaction Survey

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 7, 2009, page 21372, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NHLBI Health Information Center's Revolving Customer Satisfaction Survey. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this survey is to identify those areas in which services provided by the NHLBI Health Information Center (HIC) to health professionals, patients and their families, and the general public are outstanding and areas where improvements are needed. That information will be used to formulate programs, processes, training, and enhancements to raise the level of customer satisfaction with the services provided by the NHLBI HIC. With subsequent surveys, data will demonstrate whether gains have been made in areas for improvement and if new customer needs must be addressed. *Frequency of Response:* Twice a year. *Affected Public:* Individuals. *Type of Respondents:* Individuals who contact the NHLBI HIC by telephone or e-mail during each 1-month data collection period. The annual reporting burden is as follows: *Estimated Number of Respondents:* 99; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.05; and *Estimated Total Annual Burden Hours Requested:* 9.9. The annualized cost to respondents is estimated at: $242.15. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondent	Estimated number of respondents	Annual frequency of response	Average burden hours per response	Estimated total annual burden hours requested
General Public	43	2	0.05	4.3
Private Companies	14	2	0.05	1.4
Public Sector Groups	13	2	0.05	1.3
Health Professionals	29	2	0.05	2.9
Totals	99	.....	.....	9.9

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Ann M. Taubenheim, Principal Investigator, National Heart, Lung, and Blood Institute, Office of Communications and Legislative Activities, NIH, 31 Center Drive, Building 31, Room 4A10, Bethesda, MD 21045, or call non-toll-free number 301–496–4236 or e-mail your request, including your address, to *taubenha@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: July 17, 2009.

Ann M. Taubenheim,

Principal Investigator, NHLBI.

[FR Doc. E9–17730 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10178]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of

automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid and Children's Health Insurance (CHIP) Managed Care; *Use:* The Payment Error Rate Measurement (PERM) program measures improper payments for Medicaid and the State Children's Health Insurance Program (SCHIP). The program was designed to comply with the Improper Payments Information Act (IPIA) of 2002 and the Office of Management and Budget (OMB) guidance. Although OMB guidance requires error rate measurement for SCHIP, 2009 SCHIP legislation temporarily suspended PERM measurement for this program and changed to Children's Health Insurance Program (CHIP) effective April 01, 2009. See Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Public Law 111–3 for more details.

There are two phases of the PERM program, the measurement phase and the corrective action phase. PERM measures improper payments in Medicaid and CHIP and produces State and national-level error rates for each program. The error rates are based on reviews of Medicaid and CHIP fee-for-service (FFS) and managed care payments made in the Federal fiscal year under review. States conduct eligibility reviews and report eligibility related payment error rates also used in the national error rate calculation. CMS created a 17 State rotation cycle so that each State will participate in PERM once every three years.

The information collected from the selected States will be used by Federal contractors to conduct Medicaid and CHIP managed care data processing reviews on which State-specific error rates will be calculated. The quarterly capitation payments will provide the contractor with the actual claims to be sampled. The managed care contracts, rate schedules, and updates to both, will be used by the Federal contractor when conducting the managed care claims reviews. *Form Number:* CMS–10178 (OMB#: 0938–0994); *Frequency:* Reporting—Occasionally; *Affected Public:* State, Local, or Tribal governments; *Number of Respondents:* 34; *Total Annual Responses:* 2,040; *Total Annual Hours:* 28,050. (For policy questions regarding this collection contact Nicole Perry at 410–786–8786. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 22, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 16, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–17604 Filed 7–23–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10184]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320(a)(2)(ii). This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event, as stated in 5 CFR 1320.13(a)(2)(iii). The Centers for Medicare and Medicaid Services (CMS) is requesting that an information collection request (ICR) for the Payment Error Rate Measurement (PERM) and Medicaid Eligibility Quality Control (MEQC), be processed under the emergency clearance process. Approval of this package is essential in order to comply with the Children's Health Insurance Program Reauthorization Act (CHIPRA). CHIPRA requires CMS to give States in a year that they are participating in PERM the option to substitute MEQC data to complete the requirements of the PERM eligibility review and also the option to substitute PERM eligibility data to complete the requirements of the MEQC review. CHIPRA makes the substitution of MEQC data effective April 1, 2009 and CMS must implement this option quickly for States to use.

In addition, a State in the ongoing Fiscal Year (FY) 2009 cycle has already implemented this option but has no means to report the data to CMS. CMS also has an upcoming cycle for FY 2010 in which more States will consider substituting MEQC data for the coming PERM measurement. CMS hopes that with an emergency approval of this PRA package, the FY 2009 cycle can continue and the FY 2010 cycle can begin as

close to the scheduled start date as possible.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Eligibility Error Rate Measurement in Medicaid and the Children's Health Insurance Program; *Use:* The collection of information is necessary for CMS to produce national error rates for Medicaid and CHIP as required by Public Law 107–300, the IPIA of 2002. The collection of information is also necessary to implement provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. The information collected from the States selected for review will be used by CMS to ensure States use a statistically sound sampling methodology, to ensure the States complete reviews on all cases sampled, and will be used by the federal contractor to calculate State and national Medicaid and CHIP eligibility error rates. *Form Number:* CMS–10184 (OMB#: 0938–1012); *Frequency:* Reporting—Occasionally; *Affected Public:* State, Local, Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 53; *Total Annual Hours:* 942,764. (For policy questions regarding this collection contact Jessica Woodard at 410–786–9249. For all other issues call 410–786–1326.)

CMS is requesting OMB review and approval of this collection by *August 21, 2009,* with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by August 10, 2009.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on 410–786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collection of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by August 10, 2009.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By Facsimile or E-mail to OMB.* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: July 17, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–17603 Filed 7–23–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Procedures for Requests to use Child Care and Development Fund for Construction or Major Renovation of Child Care Facilities.

OMB No.: 0970–0160.

Description: The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued in August 1997 and last updated in May 2007. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: Tribal Child Care Lead Agencies acting on behalf of Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction or Major Renovation of Tribal Child Care Facilities	10	1	20	200

Estimated Total Annual Burden Hours: 200.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 21, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–17626 Filed 7–23–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0650]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 2009 (74 FR 10255), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0183. The approval expires on May 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: July 16, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17621 Filed 7–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request of Public Comment: 60-Day Proposed Information Collection; Indian Health Service Forms To Implement the Privacy Rule (45 CFR Parts 160 and 164); Correction

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** (FR) on June 24, 2009. The document contained two errors.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, Telephone (301) 443–7899. (This is not a toll-free number.)

Correction

In the **Federal Register** of June 24, 2009 in FR Doc. E9–14841, on page 30095, in the third column, second line, 45 CFR 164.522: change 164.522(a)(2)(1) to 164.522(a)(2); and on page 30095, in the table 45 CFR Section/IHS form, change 164.506, IHS–810 to 164.508, IHS–810.

Dated: July 17, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–17452 Filed 7–23–09; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2305–PN]

Medicare and Medicaid Programs; Application of the Accreditation Commission for Health Care for Deeming Authority for Hospices

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of a deeming application from the Accreditation Commission for Health Care (ACHC) for recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs. Section 1865(a)(3)(A) of the Social Security Act requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 24, 2009.

ADDRESSES: In commenting, please refer to file code CMS–2305–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2305–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2305–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospice provided certain requirements are met. Section 1861(dd)(2) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a hospice program. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418, specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for hospices.

Generally, in order to enter into a provider agreement with the Medicare program, a hospice must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418 of our CMS regulations. Thereafter, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act (as redesignated under section 125 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275)) provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every six years or sooner as we determine.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and reapproval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of ACHC's request for deeming authority for hospices. This notice also solicits public comment on whether ACHC's requirements meet or exceed the Medicare conditions for participation for hospices.

III. Evaluation of Deeming Authority Request

ACHC submitted all the necessary materials to enable us to make a determination concerning its request for approval as a deeming organization for hospices. This application was determined to be complete on May 25, 2009. Under Section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of ACHC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of ACHC's standards for a hospice as compared with CMS' hospice conditions of participation.
- ACHC's survey process to determine the following:

—The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

—The comparability of ACHC's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

—ACHC's processes and procedures for monitoring hospices found out of compliance with ACHC's program requirements. These monitoring procedures are used only when ACHC identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

—ACHC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—ACHC's capacity to provide us with electronic data and reports necessary for effective validation and

assessment of the organization's survey process.

—The adequacy of ACHC's staff and other resources, and its financial viability.

—ACHC's capacity to adequately fund required surveys.

—ACHC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

—ACHC's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant effect on the rights of States, local or Tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 9, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–17611 Filed 7–23–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5050–N]

Medicare and Medicaid Programs; Resolicitation of Proposals for the Private, For-Profit Demonstration Project for the Program of All-Inclusive Care for the Elderly (PACE) and Announcement of Closing Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice resolicits proposals for the private, for-profit demonstration project for the Program of All-Inclusive Care for the Elderly (PACE) and announces a closing date for the solicitation. We previously solicited proposals from private, for-profit organizations for a fully capitated joint Medicare and Medicaid demonstration.

DATES: *Closing Date:* Proposals must be submitted by July 26, 2010.

ADDRESSES: Proposals should be mailed to the following by the date specified in the **DATES** section of this notice: *Attention:* Michael Henesch, Office of Research, Development, and Information, Centers for Medicare and Medicaid Services, *Mailstop:* C4–17–27, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Michael Henesch, 410–786–6685.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1894(h)(1) and 1934(h)(1) of the Social Security Act (the Act) state that the Secretary shall grant waivers to enable up to ten private, for-profit Programs of All-Inclusive Care for the Elderly (PACE) demonstration projects to provide medical assistance to PACE program eligible individuals who are 55 years of age or older, require the level of care required for coverage of nursing facility services, and reside in the PACE program service area. The for-profit demonstration provision requires that, except for the numerical limitation of ten demonstration waivers, the operation of a PACE program by a provider shall be the same as those for PACE providers that are not-for-profit, private organizations. The purpose of this notice is to resolicit proposals for the private, for-profit demonstration project for the PACE and announces a closing date for the solicitation. A previous notice of solicitation to for-profit organizations (66 FR 42229) was published in the August 10, 2001 **Federal Register**. The purpose of the August 2001 notice was to determine whether the risk-based long-term care model employed by the nonprofit PACE can be replicated successfully by for-profit organizations.

Section 4804(b) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) requires issuance of a report that includes findings as to whether—

- The number of covered lives enrolled in for-profit PACE demonstration projects are statistically sufficient to make the findings described below;
- The population enrolled in for-profit PACE demonstration projects is less frail than the population enrolled with other PACE providers;
- Access to or quality of care for individuals enrolled with for-profit PACE programs is lower than for those enrolled in other PACE programs; and
- For-profit demonstration projects resulted in increased expenditures under Medicare or Medicaid programs above those incurred by other PACE providers.

The August 2001 **Federal Register** (66 FR 42229), solicited proposals from for-profit entities to demonstrate that they can successfully provide comprehensive coordinated care for the frail elderly under a prepaid fully-capitated payment system. That notice specified that we would—(1) consider proposals only from for-profit organizations; and (2) operate the demonstration for 3 years.

To date, there are only two for-profit PACE demonstration projects in place, both of which began in 2007.

II. Provisions of the Notice

This notice resolicits proposals for the private, for-profit demonstration project for the PACE and announces a closing date for this solicitation. We publish this notice to—

- Encourage for-profit entities to submit proposals to conduct projects to demonstrate the for-profit PACE concept over a 3 year period, and to further encourage that they do so within the next year by establishing a closing date to the solicitation; and
- Increase the number of covered enrollees across all for-profit demonstration sites.

Therefore, this notice provides an additional opportunity for interested

for-profit organizations to submit proposals to the address listed in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. If after this limited 1-year opportunity the report with the required findings cannot be completed, for-profit PACE demonstrations should plan to terminate their projects. We note that, as a resolicitation, all proposals received will be evaluated using the criteria specified in the original August 10, 2001 **Federal Register** notice (66 FR 42231) and these criteria are also available on the CMS Web site at: *http://www.cms.hhs.gov/DemoProjectsEvalRpts/MD/itemdetail.asp?itemID=CMS1202809*.

III. Collection of Information Requirements

As we do not anticipate receiving 10 or more applications for this demonstration, this document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Authority: Section 1894(h) and 1934(h) of the Social Security Act (42 U.S.C. 1395eee and 1396u–4) (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 6, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–17607 Filed 7–23–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1415–N]

Medicare Program; Announcement of Five New Members to the Advisory Panel on Ambulatory Payment Classification Groups

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces five new members selected to serve on the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of DHHS (the Secretary) and the Administrator of CMS (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. We will consider the Panel's advice as we prepare the annual updates of the hospital outpatient prospective payment system (OPPS).

FOR FURTHER INFORMATION CONTACT: For inquiries about the Panel, please contact the Designated Federal Official (DFO): Shirl Ackerman-Ross, DFO, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850, Phone (410) 786–4474.

APC Panel E-Mail Address: The E-mail address for the Panel is as follows: *CMS APCPanel@cms.hhs.gov* (**Note:** There is NO underscore in this e-mail address; there is a SPACE between CMS and APCPanel.)

News Media Contact: News media representatives must contact our Public Affairs Office at (202) 690–6145.

CMS Advisory Committees Hotlines: The CMS Federal Advisory Committee Hotline is 1–877–449–5659 (toll free) and (410) 786–9379 (local) for additional Panel information.

Web Sites: For additional information regarding the APC Panel membership, meetings, agendas, and updates to the Panel's activities, please search our Web site at the following Uniform Resource Locator (URL): *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*. (**Note:** There is an UNDERSCORE after FACA/05 (like this_); there is no space.)

The public may also access the following URL for the Federal Advisory Committee Act Web site to obtain APC Panel information: *https://www.fido.gov/facadatabase/public.asp*. A copy of the Panel's Charter and other pertinent information are on both Web sites mentioned above. You may also e-mail the Panel DFO at the above e-mail address for a copy of the Charter.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert outside advisory Panel regarding the clinical integrity of the APC groups and relative payment weights that are components of the Medicare hospital OPPS.

The APC Panel meets up to three times annually. The Charter requires that the Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel consists of up to 15 members, who are representatives of providers, and a Chair. Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. The Secretary or Administrator selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations. All members must have technical expertise to enable them to participate fully in the work of the Panel. This expertise encompasses hospital payment systems; hospital medical-care delivery systems; provider billing systems; APC groups, Current Procedural Terminology codes, and alpha-numeric Healthcare Common Procedure Coding System codes; and the use of, and payment for, drugs and medical devices in the outpatient setting, as well as other forms of relevant expertise.

The Charter requires that all members have a minimum of 5 years experience in their area(s) of expertise, but it is not necessary that any member be an expert in all of the areas listed above. For purposes of this Panel, consultants and independent contractors are not considered as being full-time employees of hospitals, hospital systems, or other Medicare providers that are paid under the Medicare hospital OPPS. A Panel member may serve up to a 4-year term. A member may serve after the expiration of his or her term until a successor has been sworn in. All terms are contingent upon the renewal of the Panel's Charter by appropriate action before its termination. The Secretary re-chartered the APC Panel effective November 21, 2008.

II. Announcement of New Members

The Panel may consist of a Chair and up to 15 Panel members who serve without compensation, according to an advance written agreement. Travel, meals, lodging, and related expenses for the meeting are reimbursed in accordance with standard Government travel regulations. We have a special interest in ensuring that women, minorities, representatives from various geographical locations, and the physically challenged are adequately represented on the Panel.

The Secretary, or her designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership.

The Panel presently consists of the following 15 members and a Chair. (The

asterisk [*] indicates a Panel member whose term expires on 08/16/2009.)

- Edith Hambrick, M.D., J.D., Chair.
- Gloryanne Bryant, B.S., R.H.I.A., R.H.I.T., C.C.S.*
- Kathleen M. Graham, R.N., M.S.H.A., C.P.H.Q.
- Patrick Grusenmeyer, Sc.D., M.P.A., F.A.C.H.
- Judith T. Kelly, B.S.H.A., R.H.I.T., R.H.I.A., C.C.S.
- Michael D. Mills, Ph.D., M.S.P.H.
- Thomas M. Munger, M.D., F.A.C.C.*
- Agatha L. Nolen, D.Ph., M.S.
- Randall A. Oyer, M.S.
- Beverly Khnie Philip, M.D.
- Russ Ranallo, M.S.
- James V. Rawson, M.D.*
- Michael A. Ross, M.D., F.A.C.E.P.
- Patricia Spencer-Cisek, M.S., A.P.R.N.-BC, A.O.C.N.®
- Kim Allan Williams, M.D., F.A.C.C., F.A.B.C.*
- Robert Matthew Zwolak, M.D., PhD, F.A.C.S.*

On December 22, 2008, we published the notice titled ''Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classification Groups'' (CMS–1411–N) in the **Federal Register** (FR) requesting nominations to the Panel replacing Panel members whose terms would expire on August 16, 2009. As a result of that FR notice, we are announcing five new members to the Panel. All five appointments are for 4-year terms commencing on October 1, 2009, as indicated below:

NEW panel members	Terms
Ruth L. Bush, M.D., M.P.H.	10/1/2009–9/30/2013
Gregory J. Przybylski, M.D.	10/1/2009–9/30/2013
David Halsey, M.D	10/1/2009–9/30/2013
Dawn L. Francis, M.D., M.H.S.	10/1/2009–9/30/2013
Daniel Pothen, M.S., R.H.I.A., CPHIMS, CCS, CCS–P, CHC.	10/1/2009–9/30/2013

Note: Dr. Bush replaces Dr. Zwolak; Dr. Przybylski replaces Dr. Williams; Dr. Halsey replaces Dr. Rawson; Dr. Francis replaces Dr. Munger; and Mr. Pothen replaces Ms. Bryant. They will all take the Oaths of Office at the winter 2010 APC Panel meeting. Therefore, the current APC Panel members are all invited to attend the 2009 late summer meeting since the new members' terms do not begin until October 1, 2009.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: *July 14, 2009.*

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–17609 Filed 7–23–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1564–N]

Medicare Program; Request for Nominations and Meeting of the Practicing Physicians Advisory Council, August 31, 2009

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice invites all organizations representing physicians to submit nominations for consideration to fill four seats on the Practicing Physicians Advisory Council (the Council) that will be vacated by current Council members in 2010. This notice also announces a quarterly meeting of the Council. The Council will meet to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services (the Secretary). This meeting is open to the public.

DATES: *Meeting Date:* Monday, August 31, 2009, from 8:30 a.m. to 5 p.m. e.d.t.

Deadline for Registration without Oral Presentation: Thursday, August 27, 2009, 12 noon, e.d.t.

Deadline for Registration of Oral Presentations: Friday, August 7, 2009, 12 noon, e.d.t.

Deadline for Submission of Oral Remarks and Written Comments: Wednesday, August 19, 2009, 12 noon, e.d.t.

Deadline for Requesting Special Accommodations: Monday, August 24, 2009, 12 noon, e.d.t.

Deadline for Submitting Nominations: Friday, September 11, 2009, 5 p.m. e.d.t.

ADDRESSES: *Meeting Location:* The meeting will be held in the Hubert H. Humphrey Building, (Room TBD), 200 Independence Avenue, SW., Washington, DC 20201.

Submission of Testimony: Testimonies should be mailed to Kelly Buchanan, Designated Federal Official (DFO), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop C4–13–07, Baltimore, MD 21244–1850, or contact the DFO via e-mail at *PPAC_hhs@cms.hhs.gov.*

Submission of Nominations: Mail or deliver nominations to the Centers for Medicare and Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: Kelly Buchanan, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–13–07, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Kelly Buchanan, DFO, (410) 786–6132, or e-mail *PPAC_hhs@cms.hhs.gov.* News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free, (410) 786–9379 local) or the Internet at *http://www.cms.hhs.gov/home/regsguidance.asp* for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and manual instructions related to physician services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms.

Section 1868(a)(2) of the Act provides that the Council meet quarterly to

discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Section 1868(a)(3) of the Act provides for payment of expenses and per diem for Council members in the same manner as members of other advisory committees appointed by the Secretary. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: John E. Arradondo, M.D., MPH; Vincent J. Bufalino, M.D., Chairperson; Joseph A. Giaimo, D.O.; Pamela A. Howard, M.D.; Roger L. Jordan, O.D.; Janice A. Kirsch, M.D.; Tye J. Ouzounian, M.D.; Gregory J. Przybylski, M.D.; Jeffrey A. Ross, DPM, M.D.; Jonathan E. Siff, M.D., MBA; Fredrica E. Smith, M.D.; Arthur D. Snow, Jr., M.D.; M. Leroy Sprang, M.D.; Christopher J. Standaert, M.D.; and Karen S. Williams, M.D.

II. Nomination Requirements

Nominations must be submitted by medical organizations representing physicians. Nominees must have submitted at least 250 claims for physician services under the Medicare program in the previous year. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. All candidates are advised to consider the time commitment of 1 full-day meeting, quarterly. If a candidate's current responsibilities preclude this level of commitment, we urge the individual to reconsider his or her nomination.

To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Consideration will be given to each nominee with regard to his or her leadership credentials, geographic and demographic factors, and projected PPAC needs. Final selections will incorporate these criteria to maintain a committee membership that is fairly balanced in terms of points of view represented and the committee's function. Selections will be made by February 2010 with new members sworn in during the May 2010 meeting.

Nominations to fill vacancies on the Council will be considered if received at the address listed in the **ADDRESSES** section of the notice, no later than the date listed in the **DATES** section of this notice. All nominating organizations will be notified in writing of those candidates selected for committee membership.

III. Meeting Format and Agenda

The meeting will commence with the Council's Executive Director providing a status report, and the CMS responses to the recommendations made by the Council at the June 1, 2009 meeting, as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Physician Quality Reporting Initiative (PQRI)/E-prescribing Update.
- DMEPOS Competitive Bidding Update.
- Value-based Purchasing.
- Physician Fee Schedule Proposed Rule Update.
- Outpatient Prospective Payment System (OPPS)/Ambulatory Surgical Center (ASC) Fee Schedule Proposed Rule Update.
- Recovery Audit Contractors (RAC) Update.

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to present a 5-minute oral testimony on agenda issues must register with the DFO by the date listed in the **DATES** section of this notice. Testimony is limited to agenda topics only. The number of oral testimonies may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to the DFO for distribution to Council members for review before the meeting by the date listed in the **DATES** section of this notice. Physicians and medical organizations not scheduled to speak may also submit written comments to the DFO for distribution by the date listed in the **DATES** section of this notice.

IV. Meeting Registration and Security Information

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

Since this meeting will be held in a Federal Government Building, the Hubert H. Humphrey Building, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. To gain access to the building, participants will be required to show a government-issued photo identification (for example, driver's license, or passport), and must be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the Hubert H. Humphrey Building and will not be permitted to attend the Council meeting.

All persons entering the building must pass through a metal detector. In addition, all items brought to the Hubert H. Humphrey Building, whether personal or for the purpose of presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for the purpose of presentation.

Individuals requiring sign language interpretation or other special accommodations must contact the DFO via the contact information specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).)

Dated: July 9, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–17606 Filed 7–23–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 29, 2009, 8:30 a.m. to June 30, 2009, 6 p.m., The River Inn, 924 25th Street, NW., Washington, DC 20037 which was

published in the **Federal Register** on June 11, 2009, 74 FR 27806–27808.

The meeting will be held August 6, 2009 to August 7, 2009. The meeting time and location remain the same. The meeting is closed to the public.

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17732 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel NEI SBIR Grant Review.

Date: August 3, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Samuel Rawlings, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300. 301–451–2020. *rawlings@nei.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel Review NIH Training Grants.

Date: August 10, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892. 301–451–2020. *kenshalod@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17453 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine; Subcommittee on Outreach and Public Information.

Date: September 15, 2009.

Time: 7:30 a.m. to 9 a.m.

Agenda: Outreach Activities.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 15–16, 2009.

Open: September 15, 2009, 9 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 15, 2009, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 16, 2009, 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17598 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: November 5–6, 2009.

Time: November 5, 2009, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Time: November 6, 2009, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Arthur A Petrosian, PhD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968. 301–496–4253. *petrosia@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17597 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information.

Date: November 10, 2009.

Open: 8:30 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 3 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl. Ctr. for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38a, Room 8n805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Prom Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17596 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

Date: September 10–11, 2009.

Open: September 10, 2009, 9 a.m. to 11:45 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 10, 2009, 12 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 11, 2009, 10 a.m. to 11:15 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center For Biomedical Communications, National Library of Medicine, Building 38A, Room 7S709, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles,

including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17595 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of General Medical Sciences Special Emphasis Panel, August 7, 2009, 8 a.m. to August 7, 2009, 5 p.m., National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on July 14, 2009, 74 FR 34025–34026.

The meeting has been changed from August 7, 2009 to August 17, 2009. The meeting is closed to the public.

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17594 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel ARRA Competing Revision—ZGM1–PPBC–1–RA.

Date: August 24, 2009.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45 Center Drive Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17593 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Cancer Prevention Research.

Date: October 26–27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17592 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stem Cell and Animal Model.

Date: August 5, 2009.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular Biology and Hemostasis.

Date: August 10–11, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Manjit Hanspal, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, 301–435–1195, *hanspalm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17590 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Examining Mammalian Models for Parkinson's Disease.

Date: August 4, 2009.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Keystone Building, 540 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Leroy Worth, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17589 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Projects in SARS and Influenza.

Date: August 13, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17742 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; R36 Meeting.

Date: August 10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd. 800, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health, and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696, *atreyapr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17739 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 28, 2009, 11 a.m. to July 28, 2009, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 26, 2009, 74 FR 30595–30596.

This meeting will be an AED held on July 27, 2009, 9 a.m. to July 28, 2009, 11:55 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17738 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Role of Pulmonary Collectins in Innate Immunity and Bronchopulmonary Dysplasia.

Date: August 7, 2009.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902. *peter.zelazowski@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17737 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Proteomic Centers.

Date: September 24–25, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Sheraton Columbia Town Center Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Katherine M Malinda, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892–7924, 301–435–0297, *malindakm@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17736 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Health Disparities Subcommittee, Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC): Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting for the aforementioned subcommittee.

Name: Health Disparities Subcommittee, Advisory Committee to the Director, CDC.

Time and Date: 9 a.m.–11 a.m., August 17, 2009.

Place: This meeting will be held by conference call. The call in number is (877) 394–7734 and enter passcode 9363147.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The subcommittee will provide counsel to the ACD, CDC on CDC's efforts to address health disparities in achieving the agency's overarching health impact goals.

Matters to be Discussed: Agenda items will include a policy brief on health equity and social determinants of health; collaboration and update with the ACD Ethics Subcommittee; and collaboration with the CDC Health Equity Workgroup.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Walter W. Williams, M.D., M.P.H., Designated Federal Officer, Health Disparities Subcommittee, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S E–67, Atlanta, Georgia 30333. Telephone 404/498–2310, e-mail: *WWilliams@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–17674 Filed 7–23–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Strengthening National Capacity in Malaria and Other Infectious Disease Operations Research, Funding Opportunity Announcement (FOA), CK09–004, Initial Review

Time and Date: 11 a.m.–2 p.m., July 29, 2009.

Correction: This notice was published in the **Federal Register** on July 13, 2009, Volume 74, Number 132, pages 33450–33451. The original notice was published with an incorrect time and date.

Contact Person for More Information: Wendy Carr, PhD, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333. Telephone (404) 498–2276.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–17673 Filed 7–23–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 8:30 a.m.–3:45 p.m., August 26, 2009.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. Teleconference available toll-free; please dial (866) 917–6900, Participant Pass Code 1803643.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to apropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters To Be Discussed: Agenda items include NIOSH Implementation of National Academies Program Recommendations for Health Hazard Evaluations, Personal Protective Technologies, Respiratory Diseases, Traumatic Injuries, Construction and Agriculture, Forestry and Fishing, Future Meetings and Closing Remarks.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 395 E Street, SW., Suite 9200, Patriots Plaza Building, Washington, DC 20201, telephone (202) 245–0655, fax (202)245–0664.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E9–17671 Filed 7–23–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ARRA–RC2–SEP 13.

Date: July 31, 2009.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *PARSADANIANA@NIA.NIH.GOV*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; ARRA–RC2–SEP 14.

Date: August 12, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute On Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *PARSADANIANA@NIA.NIH.GOV*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17588 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; COE P20 Review.

Date: August 5–7, 2009.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, Rockville Pike, Rockville, MD.

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health, and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696. *atreyapr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; CBPR Panel 1.

Date: August 10–12, 2009.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health, and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696. *atreyapr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; CBPR Panel 2.

Date: August 12–14, 2009.

Time: 6 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health, and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696, *atreyapr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17587 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Projects in MRSA.

Date: August 14, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Mechanisms of Inflammation.

Date: August 21, 2009.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Wendy F. Davidson, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–8399. *davidsonw@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17586 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee, CMRC 3.

Date: October 14, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bonnie B. Dunn, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1074, MSC 4874, Bethesda, MD 20892–4874, 301–435–0824, *dunnbo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: July 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17585 Filed 7–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Withdrawal: Second Publication of Reconsideration of Disapproval of Washington State Plan Amendment (SPA) 08–019

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Withdrawal Notice.

SUMMARY: This document withdraws the notice published on July 13, 2009 (74 FR 33449), which announced a hearing scheduled on August 4, 2009, to reconsider disapproval of Washington SPA 08–019. The July 13 notice is being withdrawn because it was an inadvertent republication of the same notice published on June 23, 2009 (74 FR 29703). This notice of withdrawal eliminates the duplication, by withdrawing the July 13 notice.

FOR FURTHER INFORMATION CONTACT: Benjamin Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–3169.

SUPPLEMENTARY INFORMATION: On June 23, 2009, we published a notice in the **Federal Register** (74 FR 29703), that announced the scheduling of an administrative hearing on August 4, 2009, to reconsider CMS' decision to disapprove Washington SPA 08–019. On July 13, 2009, the same notice was inadvertently republished in the **Federal Register** (74 FR 33449). This notice withdraws the July 13 notice, thereby eliminating the inadvertent duplication of the notice published on June 23.

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program.)

Dated: July 21, 2009.

Charlene Frizzera

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–17775 Filed 7–22–09; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses Due to Death of the License Holder

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
James B. Gill	16335	Los Angeles.
Neal G. Newns.	12673	Los Angeles.
Sidney Freidin	02055	Laredo.
John H. Adcock.	15736	Laredo.

Dated: July 17, 2009.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E9–17727 Filed 7–23–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0676]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and a selection of its subcommittees and working groups will hold meetings to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public. The subcommittees that will meet are Outreach, National Fire Protection Association (NFPA) 472 Standard, Hazardous Cargo Transportation Security (HCTS), and International Maritime Solid Bulk Cargoes (IMSBC) Code. The working groups that will meet are Barge Emission and Hazard Communication, the International Convention for the Prevention of Pollution from Ships (MARPOL), and First Responders.

DATES: The Outreach subcommittee will meet on Tuesday, August 11, 2009, from 8:30 a.m. to 10:30 a.m. The MARPOL working group will meet on Tuesday, August 11, 2009, from 10:30 a.m. to 12 p.m. The NFPA 472 Standard subcommittee will meet on Tuesday, August 11, 2009, from 12:45 p.m. to 1:45 p.m. The First Responders working group will meet on Tuesday, August 11, 2009, from 1:45 p.m. to 3 p.m. The IMSBC Code subcommittee will meet on Wednesday, August 12, 2009, from 8:30 a.m. to 10 a.m. The Barge Emission and Hazard Communication working group will meet on Wednesday, August 12, 2009, from 10 a.m. to 12 p.m. The HCTS subcommittee will meet on Wednesday, August 12, 2009, from 1:15 p.m. to 4 p.m.

ADDRESSES: CTAC, its subcommittees and working groups will meet at the U.S Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC. If interested in making presentations, please send your request to COMMANDANT (CG–5223), ATTN (CG–5223), U.S. Coast Guard, 2100 2nd St., SW., STOP 7126, Washington, DC, 20593–7126. Presentations can be oral or in writing.

FOR FURTHER INFORMATION CONTACT: Commander Michael Roldan, Designated Federal Officer (DFO) of CTAC at 202–372–1420, or Ms. Sara Ju, Assistant to the DFO, at 202–372–1422, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agendas of Meetings

Chemical Transportation Advisory Committee (CTAC). The agenda includes the following:

(1) Progress report from the Outreach subcommittee.

(2) Status report from the Barge Emission and Hazard Communication working group.

(2) Status report on the HCTS subcommittee.

(3) Final report on the IMSBC Code subcommittee.

(4) Status report on the MARPOL working group.

(5) Status report on the NFPA 472 Standard subcommittee.

(6) Status report from the First Responders working group.

(7) Presentation from the Environmental Protection Agency regarding air monitoring and MARPOL issues.

(8) Presentation from the Chemical Facility Anti Terrorism Standards (CFATS) regarding the facility inspection process.

(9) Presentation regarding the market of Liquefied Natural Gas.

Outreach Subcommittee. The subcommittee will discuss its efforts and any upcoming events where CTAC may be present to help promote its mission of issues relating to the secure marine transportation of hazardous materials in bulk.

HCTS Subcommittee. The subcommittee will discuss progress with the Transportation Workers Identification Credentials (TWIC) program and proposed Advanced Notice of Arrival (ANOA) regulatory changes.

IMSBC Code Subcommittee. The subcommittee will discuss and finalize recommendations to harmonize the US regulations with the IMSBC Code and with Chapter VI of the International Convention for the Safety of Life at Sea, and incorporation of requirements and best practices for the safe transport of solid bulk cargoes contained in Coast Guard policy, guidelines, and previously issued special permits.

MARPOL Working Group. The working group will review the task statement and discuss improvements for the adequacy of port waste reception facilities.

NFPA 472 Standards Subcommittee. The subcommittee will review the task statement and identify any outstanding items.

Barge Emission and Hazard Communication Working Group. The working group will discuss outreach efforts especially aimed at barge owners and operators regarding best practices for reducing hazardous emissions.

First Responders Working Group. The working group will discuss how to create a training program for first responders for maritime incidences.

Procedural

These meetings are open to the public. At the Chair's discretion, members of the public may make oral presentations during these meetings. If you would like to make an oral presentation, please notify the DFO no later than August 7, 2009. Written material for distribution at these meetings should reach the Coast Guard no later than August 7, 2009. If you would like a copy of your material distributed to each member of the committee in advance of these meetings, please submit 25 copies to the DFO no later than August 7, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at these meetings, contact the DFO as soon as possible.

Dated: July 21, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9–17753 Filed 7–21–09; 4:15 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center

[Docket No. FLETC–2009–0001]

State and Local Training Advisory Committee

AGENCY: Federal Law Enforcement Training Center (FLETC), DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The State and Local Training Advisory Committee (SALTAC) will meet on September 2, 2009, in Brunswick, GA. The meeting will be open to the public.

DATES: The SALTAC will meet Wednesday, September 2, 2009, from 8 a.m. to 4 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 500 Mall Boulevard, Brunswick, GA 31525. Send written material, comments, and/or requests to make an oral presentation to the contact person listed below by August 20. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by August 20. Comments must be identified by FLETC–2009–0001 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: reba.fischer@dhs.gov*. Include docket number in the subject line of the message.
- *Fax:* (912) 267–3531. (Not a toll-free number).
- *Mail:* Reba Fischer, Designated Federal Officer (DFO), Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the State and Local Training Advisory Committee, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524; (912) 267–2343; *reba.fischer@dhs.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the State and Local Training Advisory Committee is to advise and make recommendations on matters relating to the selection, development, content and delivery of training services by the OSL/FLETC to its State, local, campus, and tribal law enforcement customers. The draft agenda for this meeting focuses on the Rural Policing Institute (RPI). Committee members will provide recommendations on providing training to rural law enforcement and emergency responder professionals.

Procedural: This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Visitors must pre-register attendance to ensure adequate seating. Please provide your name and telephone number by close of business on August 20, to Reba Fischer (contact information above).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Reba Fischer as soon as possible.

Dated: July 9, 2009.

Seymour A. Jones,

Deputy Assistant Director, Office of State and Local Training.

[FR Doc. E9–17682 Filed 7–23–09; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0671]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC advises, consults with, and makes recommendations to the Coast Guard on matters relating to the safe and secure transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways.

DATES: Applications should reach the Coast Guard on or before September 30, 2009.

ADDRESSES: You may request an application form by writing to Commandant (CG–5223), Attn Chief Hazardous Materials Standards Division, U.S. Coast Guard, 2100 2ND ST SW., STOP 7126, Washington, DC 20593–7126; by calling (202) 372–1420/1422; or by faxing (202) 372–1926. Submit completed application forms to the same address. This notice and the application form are available on the Internet at *http://www.regulations.gov* by clicking in ''Advanced Docket Search'', entering ''USCG–2009–0671'' in the Docket ID box, and clicking on ''submit''. The application form is also available at *http://homeport.uscg.mil/ctac* as a supporting document for ''How to become a CTAC member'' under ''Members''.

FOR FURTHER INFORMATION CONTACT: Commander Michael Roldan, Designated Federal Officer (DFO) of CTAC, or Ms. Sara S. Ju, Assistant to the DFO, telephone (202) 372–1420/1422, fax (202) 372–1926.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is an advisory committee constituted under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463). It advises, consults with, and makes recommendations to the Commandant through the Assistant Commandant for Marine Safety, Security and Stewardship on matters relating to the safe and secure transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating the position of the United States on hazardous material transportation issues prior to meetings of the International Maritime Organization.

CTAC meets at least once a year, usually twice a year, at Coast Guard Headquarters in Washington, DC, or in another location. CTAC's subcommittees and working groups may meet to perform specific assignments as required.

The Coast Guard will consider applications for eight positions that expire on December 31, 2009. To be eligible, applicants should have experience associated with, and represent the viewpoints of, the following areas associated with marine transportation of hazardous materials in bulk: chemical manufacturing companies, companies that handle or transport chemicals in the marine environment, vessel design and construction companies, marine safety or security companies and marine environmental protection groups. Each member serves for a term of 3 years. Some members may serve consecutive terms. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: July 20, 2009.

J. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9–17750 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5282–N–02]

Notice of Proposed Information Collection for Public Comment: Homelessness Prevention and Rapid Re-Housing Program (HPRP) Quarterly and Annual Performance Reporting

AGENCY: Office of the Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 22, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone (202) 402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, CPD, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410; telephone (202) 402–4497 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Homelessness Prevention and Rapid Re-Housing Program (HPRP) Quarterly and Annual Performance Reporting.

Description of the need for the information and proposed use: This information collection, as required by the American Reinvestment and

Recovery Act (ARRA) of 2009, will enable HUD to monitor grantees that receive funding through the Homelessness Prevention and Rapid Re-Housing Program (HPRP) as well as report aggregate data to HUD staff, other Federal agencies, the Congress, the Office of Management and Budget, and the public.

Members of affected public: Grantess and subrecipients for the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: (540 respondents × 4 quarterly reports/year × 3,157 minutes per report = 113,652 hours per annum) + (240 respondents × 1 annual report × 16,380 minutes per report = 147,420 hours per annum).

The total burden is 261,072 hours per annum.

Status of the proposed information collection: Revision of currently approved package 2506–0186.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 13, 2009.

William H. Eargle,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E9–17327 Filed 7–23–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* July 24, 2009.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 16, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–17324 Filed 7–23–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision

AGENCY: National Park Service, Department of the Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: Notice is hereby given that the boundary of Virgin Islands National Park is modified to include one tract of land adjacent to the park. This revision is made to include privately owned property that the landowners wish to donate to the United States. The National Park Service has determined that inclusion of the tract within the park's boundary will make significant contributions to the purposes for which the park was established. After the United States acquires the tracts, the National Park Service will manage them in accordance with applicable law.

FOR FURTHER INFORMATION CONTACT: National Park Service, Mark Hardgrove, Superintendent, Virgin Islands National Park, 1300 Cruz Bay Creek, St. John, V.I. 00830.

DATES: The effective date of this boundary revision is the date of publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Act of August 2, 1956, 70 Stat. 940, codified as amended at 16 U.S.C. 398, established the Virgin Islands National Park and provides that after advising the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make these boundary revisions. This action will add one tract comprising 2.21 acres of land, more or less, to the Virgin Islands National Park. The acquisition of this tract is required to maintain the park's natural and ecological integrity. The tract is listed as follows: Estate Concordia A, 15A Coral Bay Quarter, Parcel 30–3, comprising 2.21 acres. The referenced tract is depicted on land acquisition status map segment 07, having drawing number 161/92,009. This map is on file at the National Park Service, Land Resources Program Center, Southeast Region, and at the Office of the Superintendent, Virgin Islands National Park.

Note: When contacting this office or any government office, before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 27, 2009.

David Vela,

Regional Director, Southeast Region.

Editorial Note: This document was received in the Office of the Federal Register on July 21, 2009.

[FR Doc. E9–17709 Filed 7–23–09; 8:45 am]

BILLING CODE 4310–VP–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06000–L16100000]

Notice of Availability of Draft South Coast Resource Management Plan Amendment and Draft Environmental Impact Statement for the Santa Ana River Wash Land Exchange, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft South Coast Resource Management Plan Amendment and Draft Environmental Impact Statement (EIS) for the Santa Ana River Wash Land Exchange and by this Notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft EIS within 90 days following the date the Environmental Protection Agency

publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments by any of the following methods:

Web Site: http://www.blm.gov/ca/palmsprings.

- *E-mail: mbennett@ca.blm.gov.*
- *Fax:* (760) 833–7199.
- *Mail:* Bureau of Land Management, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262.

Copies of the Draft South Coast Resource Management Plan Amendment and Draft Environmental Impact Statement (EIS) for the Santa Ana Wash Land Exchange are available for review at the Palm Springs-South Coast Field Office and via the Internet at *http://www.blm.gov/ca/palmsprings.* Electronic (on CD–ROM) or paper copies may also be obtained by contacting Michael Bennett at the addresses and phone number below. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Michael Bennett; Bureau of Land Management, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262; (760) 833–7139; *mbennett@blm.gov.*

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes a proposed exchange of ownership of approximately 315 acres of BLM land with approximately 320 acres of land owned by the San Bernardino Valley Water Conservation District (District), and the amendment of the South Coast Resource Management Plan (SCRMP) to support this exchange. Additional lands, including up to 85 acres of BLM lands (Federal lands managed by the BLM) and up to 60 acres of District land, will be exchanged if necessary to equalize values. The lands proposed for exchange are located within the Santa Ana River Wash in southwestern San Bernardino County, California. A primary purpose of the exchange is for the BLM to dispose of isolated lands which have been previously degraded by mining activities within the Santa Ana River Wash ACEC, and in exchange, to acquire District lands with high habitat value. Lands acquired by the BLM through the proposed exchange would be given the ACEC land use designation. These lands would also become part of the planned multi-jurisdictional, multi-species Habitat Conservation Area (HCA) described in the 2008 Upper Santa Ana River Wash Land Management and Habitat Conservation Plan (Wash Plan). Of the lands acquired by the District, approximately 259 acres would be leased for mining and approximately 56 acres would be set aside for habitat conservation. This action would fulfill the need for a comprehensive solution to competitive land uses within the Wash Plan Area by preserving unique habitats under the BLM ACEC while allowing mineral development and other uses to occur in predominantly disturbed areas. These Federal actions are analyzed in the Draft EIS. A Record of Decision for the proposed land exchange and plan amendment will be prepared following the Final EIS in accordance with the planning regulations at 43 CFR 1610 and the NEPA, 42 U.S.C. 4321 *et seq.* The Notice of Intent to publish this EIS was published in the **Federal Register** on April 26, 2004. Public workshops and scoping meetings were held in the cities of Highland and Redlands in May 2004. Predominant issues identified so far include threatened, endangered, and other special status species, mineral resources, water resources, recreation, visual resources, cultural resources, land management, and traffic management.

Authority: 40 CFR 1506.6, 43 CFR 1610.2.

John R. Kalish,

Field Manager.

[FR Doc. E9–17574 Filed 7–23–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Walker River Basin Acquisition Program

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Meetings for the Draft Environmental Impact Statement (Draft EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) has made available for public review and comment the Draft EIS for the Walker River Basin Acquisition Program. (Acquisition Program). Reclamation is directed in Public Law 109–103 to provide $70 million in funding to the University of Nevada to implement a program for environmental restoration in the Walker River Basin. The law directs that the funds be used by the University to acquire from willing sellers land, water appurtenant to the land, and related interests in the Walker River Basin, Nevada. Acquired water rights would be transferred to provide water to Walker Lake. The funding is also for the University to establish and operate an agricultural and natural resources center.

The Draft EIS evaluates the potential environmental effects of the Acquisition Program on the affected communities, tribes, and environmental resources of the Walker River Basin in Nevada.

DATES: Submit written comments on the draft environmental document on or before [INSERT DATE 45 DAYS AFTER DATE OF EPA'S PUBLICATION OF EISES REICEVED].

Public meetings will be held to discuss the purpose and content of the draft environmental document and to provide the public an opportunity to comment on the draft environmental document. Written comments will also be accepted at the public meetings. The meetings dates and times are:

- Monday, August 17, 2009, 6 to 8 p.m., Reno, NV;
- Tuesday, August 18, 2009, 6 to 8 p.m., Yerington, NV;
- Wednesday, August 19, 2009, 6 to 8 p.m., Wellington, NV;
- Thursday, August 20, 2009, 6 to 8 p.m., Hawthorne, NV.

ADDRESSES: The public meetings will be held at:

- Rancho San Rafael County Park, Main Ranch House, 1595 N. Sierra Street, Reno, NV 89503;
- Casino West Convention Center, 11 North Main Street, Yerington, NV 89447;
- Smith Valley Community Center, 2783 Highway 208, Wellington, NV 89444;
- Mineral County Public Library, First & ''A'' Street, Hawthorne, NV 89415.

Written comments on the Draft EIS should be addressed to Mrs. Caryn Huntt DeCarlo, Bureau of Reclamation, 705 N Plaza, Room 320, Carson City, NV 89701.

Copies of the draft document may be requested from Mrs. Caryn Huntt DeCarlo at the above address, by calling 775–884–8352 or at *chunttdecarlo@mp.usbr.gov.* See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS are available.

FOR FURTHER INFORMATION CONTACT: Mrs. Caryn Huntt DeCarlo, Bureau of Reclamation at the phone number or e-mail address above.

SUPPLEMENTARY INFORMATION: Since 1882, diversions from the Walker River, primarily for irrigated agriculture, have resulted in a steadily declining surface elevation of Walker Lake with a current net decrease of 150 feet. The decrease has resulted in negative impacts to water quality and lake ecology and congressional legislation has been passed to address the concerns. Section 2507 of Public Law 107–171 (Desert Terminal Lakes Program) appropriated funds to provide water to at-risk natural desert terminal lakes. Subsequent legislation in 2003 specified that the funding was to be used ''only for the Pyramid, Summit, and Walker Lakes in the State of Nevada.'' Additional legislation in 2006, Public Law 109–103, Title II, Section 208(a) allocated $70 million to be provided by Reclamation to the University of Nevada for acquisition, from willing sellers, for land, water appurtenant to the land, and related interests in the Walker River Basin, Nevada. The goal of the Acquisition Program is to acquire water rights sufficient to increase the long-term average annual inflow to Walker Lake by 50,000 acre-feet.

The Draft EIS considers the direct, indirect, and cumulative effects on the physical, natural, and human environment that may result from the Acquisition Program. The Draft EIS addresses potentially significant environmental issues. Three acquisition alternatives as well as the no action alternative are addressed.

Copies of the Draft EIS are available for public review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001;
- Bureau of Reclamation, Mid-Pacific Regional Office Library, 2800 Cottage Way, W–1825, Sacramento, CA 95825–1898;
- Bureau of Reclamation, Lahontan Basin Area Office, 705 N Plaza, Room 320, NV 89701;
- Lyon County Library—Smith Valley, 32 Day Lane, Smith Valley, NV 89444–0156;
- Lyon County Library—Yerington, 20 Nevin Way, Yerington, NV 89447;
- Mineral County Library—Hawthorne, P.O. Box 1390, Hawthorne, NV 89415;
- Walker River Paiute Tribe—P.O. Box 220, Schurz, NV 89427;
- Yerington Paiute Tribe—171 Campbell Lane, Yerington, NV 89447.

If special assistance is required at the public meetings, please contact Caryn Huntt DeCarlo at 775–884–8352 no less than five working days before the meeting to allow Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 27, 2009.

Richard M. Johnson,

Acting Regional Director, Mid-Pacific Region.

Editorial Note: This document was received in the Office of the Federal Register on July 21, 2009.

[FR Doc. E9–17675 Filed 7–23–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI01000–L71220000–PH0000–LVTF80230000; DDG–07–0010]

Notice of Availability of the Final Environmental Impact Statement for the Three Rivers Stone Quarry Expansion

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*) the Bureau of Land Management (BLM), Challis Field Office, announces the availability of the Three Rivers Stone Quarry Expansion Final Environmental Impact Statement (FEIS). The FEIS addresses a proposal submitted by L&W Stone Corporation to amend the existing Plan of Operations to allow for expansion of its existing building stone quarry.

DATES: The FEIS is available for 30 days following publication of the Environmental Protection Agency Notice of Availability (NOA) in the **Federal Register**. The Record of Decision (ROD) will not be approved by the BLM for at least 30 days following publication of the NOA for the FEIS by the Environmental Protection Agency.

ADDRESSES: Copies of the FEIS are available upon request from the BLM Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, Idaho, 83401, phone 208–524–7530. You may request either a paper or an electronic (CD) copy. A copy of the FEIS is also available on the Internet at *http://www.blm.gov/id/st/en/fo/challis/nepa/Three_Rivers.html.*

FOR FURTHER INFORMATION CONTACT: Charles Horsburgh, Project Manager, BLM Idaho Falls District, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, phone 208–524–7530, or fax 208–524–7505.

SUPPLEMENTARY INFORMATION: L&W Stone Corporation mines locatable flagstone on public lands administered by the BLM's Challis Field Office in Custer County, Idaho. L&W Stone submitted an Amended Plan of Operations for its quarry under the 43 CFR 3809 Regulations in December 2002. The BLM completed an Environmental Assessment (EA) regarding the Amended Plan of Operations, signed a Finding of No Significant Impact (FONSI) in July 2004, and approved the project. As a result of a lawsuit that was filed objecting to that approval, the BLM was ordered by a Federal judge to prepare an EIS for the Amended Plan of Operations.

A Notice of Intent to Prepare the EIS was published in the **Federal Register** on October 21, 2005, inviting comments on the scope of the EIS, concerns, issues, and proposed alternatives. Public scoping meetings were held during the 45-day public comment period in Challis, Idaho, on November 16, 2005, and in Boise, Idaho, on November 17, 2005.

The Draft EIS was released for public review on December 14, 2007. Public meetings were held during the 45-day public comment period in Boise, Idaho, on January 16, 2008, and in Challis, Idaho, on January 17, 2008. A total of 13 written comments were received during this process. All comments were analyzed and appropriate changes or clarifications were incorporated into the FEIS. The comments and responses are appended to the FEIS.

The BLM will prepare a Record of Decision (ROD) for the proposed project no earlier than 30 days following the publication of the NOA by the Environmental Protection Agency. Public comments will be accepted on the FEIS and will be considered as part

of the BLM decision making process. However, the BLM will not formally respond to the comments.

The BLM asks that those submitting comments make them as specific as possible with reference to page numbers and chapters in the FEIS.

Public comments, including the names and mailing addresses of respondents, will be available for public review at the Idaho Falls District Office in Idaho Falls, Idaho, during regular business hours from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

David Rosenkrance,

BLM Challis Field Manager.

[FR Doc. E9–17677 Filed 7–23–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the Modification/Removal of the Canal Diversion Dam in Cuyahoga Valley National Park, OH

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the Modification/Removal of the Canal Diversion Dam in Cuyahoga Valley National Park, Ohio.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) is announcing its intent to prepare an Environmental Impact Statement (EIS) for the modification/removal of the Canal Diversion Dam in Cuyahoga Valley National Park, Ohio. The Canal Diversion Dam on the Cuyahoga River is owned by the Ohio Department of Natural Resources (ODNR). The NPS will be the lead Federal Agency for preparation of the EIS, and ODNR and the Ohio Environmental Protection Agency (OEPA) will be cooperating agencies. The Canal Diversion Dam (alternatively known as the Brecksville Dam, Station Road Dam, SR82 Dam, or SUM–3253–1) on the Cuyahoga River is 183 feet long, nearly 8 feet high, and feeds water into the Ohio and Erie Canal that then drains north through Cuyahoga Valley National Park and into Cleveland Metropark's Ohio and Erie Canal Reservation. The watered portion of the canal and its historic features are a National Historic Landmark.

The OEPA has concluded that the dam negatively impacts water quality and interrupts aquatic communities by restricting fish passage. The NPS has concluded that maintaining water in the canal is also critical because of the important natural, cultural, and educational values associated with the watered portion of the canal. Alternatives that seek to improve river water quality and habitat values while maintaining a watered canal segment are being evaluated.

DATES: To determine the scope of issues to be addressed in the EIS and to identify significant issues related to the modification/removal of the Canal Diversion Dam, the NPS and cooperating agencies will conduct a public scoping meeting in the area of Cuyahoga Valley National Park. Representatives of the NPS and the cooperating agencies will be available to discuss issues, resource concerns, and the planning process at the public meeting. When the public scoping meeting has been scheduled, its location, date, and time will be published in local media and on the NPS Web site listed below.

ADDRESSES: Information will be available for public review and comment, either in person or by written request, at the headquarters for Cuyahoga Valley National Park located at 15610 Vaughn Road, Brecksville, Ohio 44141; telephone 216–524–1497. Information will be available at the NPS Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/cuva.* Information will also be available from the OEPA, 2110 East Aurora Road, Twinsburg, Ohio 44087.

To facilitate sound analysis of environmental impacts, the NPS and cooperating agencies are gathering information necessary for the preparation of the EIS. Suggestions on environmental issues to be analyzed and additional alternatives to consider are being sought from other Agencies, Tribes, organizations, and the public. Comments and participation in this scoping process are invited and encouraged. If you wish to comment on the scoping materials or on any other issues associated with the EIS, you may submit your comments by any one of several methods. You may submit your comments online through the PEPC Web site: Click on the link titled ''Modification/removal of Canal Diversion Dam on the Cuyahoga River at Station Road/SR82.'' You may also mail comments to the OEPA at the address given above. To aid in the scoping process, comments should be received within 45 days of the beginning of the public comment period.

Interested Agencies and organizations are also invited to arrange meetings to provide input directly. Such meetings can be arranged by contacting the OEPA at the address and telephone above.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: For information concerning the scope of the EIS and to arrange Agency meetings, requests should be directed to: William J. Zawiski, Environmental Scientist, Ohio Environmental Protection Agency, 2110 East Aurora Road, Twinsburg, Ohio 44087; e-mail: *bill.zawiski@epa.state.oh.us*; telephone 330–963–1134. Information can also be obtained from the Project Contact, Meg Plona, Biologist, Cuyahoga Valley National Park, telephone 330–342–0764, extension 2.

SUPPLEMENTARY INFORMATION: The Cuyahoga River upstream of the dam does not meet aquatic community goals set forth in Ohio's Water Quality Standards. The Lower Cuyahoga River Total Maximum Daily Load (TMDL) report, as well as previous OEPA water quality surveys, has indicated that a cause of nonattainment of the standards is the dam. The TMDL report recommends that the Canal Diversion Dam be modified or removed to restore water quality in the Cuyahoga River upstream of the structure. Public and stakeholder scoping regarding modification or removal of the dam was initiated by the OEPA in August 2002, and included public meetings August

and November 2005. It was unclear whether the proposed action would involve NPS lands or adversely affect NPS resources, or whether such effects could be appropriately analyzed in another NEPA document until more information regarding possible alternatives and impacts became available. The NPS managers now believe that an EIS is most appropriate given the scope and complexity of the proposed action, and the likelihood that alternatives may impact park resources, involve access to NPS lands, or utilize NPS funds. All information generated during the previous scoping process will be retained for use in this EIS process. Anyone who contributed comments to the OEPA regarding the dam removal need not resend their comments.

A preliminary set of alternatives for modification or removal of the Canal Diversion Dam has been developed. These include: (1) No Action—the dam would remain on the river continuing to adversely impact water quality of the Cuyahoga River and provide water to the Ohio and Erie Canal; (2) Total Removal—the dam would be removed, restoring a free-flowing river and water would be provided to the Ohio and Erie Canal to maintain its current watered state; and (3) Partial Removal/Modification—the dam would be altered to allow for restoration of water quality as well as eliminating existing recreational boating hazard. Water would be provided to the Ohio and Erie Canal to maintain its current watered state. A variety of background documents have been completed and are available for review in the NPS PEPC Web site listed above.

Dated: December 5, 2008.

Ernest Quintana,

Regional Director, Midwest Region.

Editorial Note: This document was received in the Office of the Federal Register on July 21, 2009.

[FR Doc. E9–17705 Filed 7–23–09; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA and Museum of Anthropology, Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA, and in the physical custody of the Museum of Anthropology, Washington State University, Pullman, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the unassociated funerary objects. The National Park Service is not responsible for the determinations in this notice.

In July 1963, cultural items were removed from the Marmes Rockshelter (45FR50), Franklin County, WA, by Washington State University under contract with the National Park Service and prior to the inundation of the reservoir created by the construction of the Lower Monumental Dam by the U.S. Army Corps of Engineers. The material from the excavation is curated at Washington State University. The cultural items that were removed are believed to have been placed with or near the human remains from Burial 13. As the human remains from Burial 13 are not in the control or possession of a Federal agency or museum, the cultural items are unassociated funerary objects. The 176 unassociated funerary objects are 44 faunal fragments, 12 basalt samples, 15 chert/cryptocrystalline flakes, 2 shells, 9 organic materials (including plants), 1 stone sample, 6 pieces of basalt blocky shatter, 6 pieces of chert/cryptocrystalline blocky shatter, 2 chert/cryptocrystalline flake shatter, 6 basalt flake shatter, 2 obsidian flakes, 1 retouched basalt flake, 1 retouched chert/cryptocrystalline flake, 53 basalt flakes, 1 chert/cryptocrystalline core, 1 chert/cryptocrystalline flakes, 12 basalt flakes, and 2 lots of shell remains.

The unassociated funerary objects are determined to be associated with the Late Cascade Phase (6500 to 4500 BP). The archeological evidence found in the Marmes Rockshelter (and in six nearby archeological sites) supports a nearly continuous occupation from the Late Cascade Phase to the Harder Phase (2500–500 BP), and provides the most direct physical line of evidence supporting a determination of cultural affiliation between an earlier group and a present-day Indian tribe. Geographical and anthropological lines of evidence support the archeological. Oral tradition evidence provided by tribal elders indicates that a large Palus (Palouse) village, inhabited by tribal ancestors from time immemorial, was once located near the Marmes Rockshelter. According to tribal elders, these ancestors were mobile, and traveled the landscape to gather resources as well as trade among each other.

Ethnographic documentation indicates that the present-day location of the Marmes Rockshelter in Franklin County, WA, is within the territory occupied historically by the Palus (Palouse) Indians. During the historic period, the Palouse people settled along the Snake River, relied on fish, game and root resources for subsistence, shared their resource areas and maintained extensive kinship connections with other groups in the area, and had limited political integration until the adoption of the horse (Walker 1998). These characteristics are common to the greater Plateau cultural communities surrounding the Palouse territory including the Nez Perce, Cayuse, Walla Walla, Yakama, and Wanapum groups. Moreover, the information provided during consultation by representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, substantiate their cultural affiliation with each other and with the earlier group represented at the Marmes Rockshelter. The descendants of these Plateau communities of southeastern Washington, now widely dispersed, are members of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group.

Officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 176 unassociated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the U.S. Department of

Defense, Army Corps of Engineers, Walla Walla District, have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Nez Perce Tribe, Idaho. Furthermore, officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District have determined that there is a cultural relationship between the unassociated funerary objects and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believe their tribe is culturally affiliated with the unassociated funerary objects should contact Lieutenant Colonel Michael Farrell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Avenue, Walla Walla, WA 99362–1876, telephone (509) 527–7700, before August 24, 2009. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Nez Perce Tribe, Idaho may proceed after that date if no additional claimants come forward. The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District acknowledges participation of the Wanapum Band, a non-Federally recognized Indian group, in the transfer of the unassociated funerary objects to the Federally-recognized Indian tribes.

The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group that this notice has been published.

Dated: July 14, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–17667 Filed 7–23–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definitions of ''sacred objects'' and ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The four cultural items are a medicine chord and three buckskin caps.

In 1912, the medicine cord was collected by Grace Nicholson from an unknown locality. It was donated to the Peabody Museum of Archaeology and Ethnology by Lewis Farlow later that same year. It measures approximately 86 cm and is made of a twisted leather thong with various leather fringes. The leather thong is tied with metal wraps at intervals of approximately 12 cm. An assemblage of items are attached to the bottom of the cord: a large stone projectile point; a small hide bundle tied with turquoise, coral, shell, and abalone beads; a black discoidal bead; a clear glass cylindrical bead; a ceramic bead; and a violet glass bead.

Collector's documentation describes this cultural item as White Mountain Apache. Consultation with the White Mountain Apache Tribe indicates that stylistic characteristics of this item are consistent with traditional White Mountain Apache forms.

The first cap is made of two hide pieces sewn together with sinew. It has a twisted hide chin strap on the bottom. It measures approximately 12.5 cm x 19 cm x 17.5 cm. There is a 2 cm high hide band which is folded over and sewn along the bottom of the cap. On the band are black zigzag designs with alternating black triangles. Two parallel black lines run along the circumference of the cap above the hide band. A cross-like design, formed with four black converging triangles is painted on the front center and back center of the cap. Numerous feathers are attached to the crown of the cap. There are four elements equally spaced along the top of the cap: a shell hoop with sinew wrapping above one of the painted crosses; a worked abalone shell above the other painted cross; one piece of obsidian with sinew wrapping; and one piece of quartz with sinew wrapping.

The second cap is made of two pieces of hide sewn together with sinew. There is a hide chin strap on the bottom of the cap. The cap measures approximately 9 cm x 17 cm x 19 cm. It has a band of green and blue beads across the bottom. There is a band of nine triangular linear designs which are composed of red triangles within black outlines above the band of beads. A cluster of 13 feathers are attached to the crown of the cap.

The third cap is made of three pieces of hide sewn together with sinew. There is a twisted hide chin strap on the bottom. The cap measures approximately 12.5 cm x 13.5 cm x 17.5 cm. There is a strip of red cloth trim along the bottom. Above the cloth is a row of yellow triangles with black outlines which extends across the circumference of the cap. Four black painted zigzag linear designs ascend from the spaces in-between the yellow triangles at intervals of every two or three triangles. These linear designs each branch out into five lines. Each line extends all the way to the crown of the cap and culminates in a black dot. There is a row of six holes below the center of the cap which runs across the circumference; this suggests that additional elements may have been present at some point. Ten holes on the crown of the cap indicate the presence of attachments which are currently absent.

During the summer of 1922, the three buckskin caps were purchased by Samuel Guernsey from Babbitt's Store in Flagstaff, AZ. Mr. Guernsey donated the first cap to the Peabody Museum in the same year it was purchased. In 1985, William Claflin bequeathed the second and third caps to the Peabody Museum. Museum documentation describes all three buckskin caps as ''Western Apache.'' William Claflin's catalogue states that the two caps in his possession came from the ''Trading Post on the Apache Reservation.'' Museum accession files list the cap donated by Samuel Guernsey as having come from ''Cibicu Creek Trading Post.'' Given that all three of the caps have similar provenience information and were purchased by Samuel Guernsey around

the same time, it is most likely that the Trading Post described by Claflin was the one at Cibecue Creek. Consultation with White Mountain Apache representatives indicates that Cibecue Creek, AZ, is within the traditional and historical territory of the White Mountain Apache Tribe. They also agree that stylistic characteristics of these three caps are consistent with traditional White Mountain Apache forms.

Anthropological, historical, and oral historical evidence indicate that these four items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. In addition, these lines of evidence also support that these items have ongoing traditional and cultural importance central to the White Mountain Apache Tribe and could not have been alienated, appropriated, or conveyed by any individual tribal member at the time they were separated from the group.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the four cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Peabody Museum of Archaeology and Ethnology have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the four cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA 02138, telephone (617) 496–3702, before August 24, 2009. Repatriation of the sacred objects/objects of cultural patrimony to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona may proceed after that date if no additional claimants come forward.

Peabody Museum of Archaeology and Ethnology is responsible for notifying the San Carlos Apache Tribe of the San Carlos Apache Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Reservation, Arizona that this notice has been published.

Dated: July 14, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–17668 Filed 7–23–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee, the Adaptive Management Work Group (AMWG), a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

DATES: The AMWG will conduct the following meeting:

Dates and Addresses: Wednesday–Thursday, August 12–13, 2009. The meeting will begin at 9:30 a.m. and end at 5 p.m. the first day and will begin at 8 a.m. and conclude at approximately 3 p.m. on the second day. The meeting will be held at the Fiesta Inn, 2100 S. Priest Drive, Tempe, Arizona.

Agenda: The primary purpose of the meeting will be for the AMWG to discuss and recommend the Fiscal Year 2010–11 biennial budget, workplan, and hydrograph. In addition, they will receive updates and discuss the following items: (1) Mid-fiscal Year 2009 expenditures, (2) Status of Grand Canyon Monitoring and Research Center projects, (3) 2007 and 2008 Biological Opinion conservation measures, (4) Colorado River Basin hydrology, (5) Future Funding Sources for Non-native Fish Control Efforts, (6) the Draft Humpback Chub Comprehensive Plan, (7) a stakeholder's perspective by the Arizona Game and Fish Department, and other administrative and resource issues pertaining to the AMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/09aug12/index.html.* Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone 801–524–3715; facsimile 801–524–3858; e-mail at *dkubly@usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, Bureau of Reclamation, telephone (801) 524–3715; facsimile (801) 524–3858; e-mail at *dkubly@usbr.gov.*

Dated: July 7, 2009.

Tom Ryan,

Manager, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. E9–17672 Filed 7–23–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 10 a.m., on Friday, August 14, 2009, at the Allegany Arts Council Community Room, 9 North Centre Street, Cumberland, MD 21502.

DATES: Friday, August 14, 2009.

ADDRESSES: Allegany Arts Council Community Room, 9 North Centre Street, Cumberland, MD 21502.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson;
Mr. Charles J. Weir;
Mr. Barry A. Passett;
Mr. James G. McCleaf II;
Mr. John A. Ziegler;
Mrs. Mary E. Woodward;
Mrs. Donna Printz;
Mrs. Ferial S. Bishop;
Ms. Nancy C. Long;
Mrs. Jo Reynolds;
Dr. James H. Gilford;
Brother James Kirkpatrick;
Dr. George E. Lewis, Jr.;
Mr. Charles D. McElrath;
Ms. Patricia Schooley;
Mr. Jack Reeder;
Ms. Merrily Pierce.

Topics that will be presented during the meeting include:

1. Update on park operations.

2. Update on major construction development projects.

3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: June 11, 2009.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. E9–17707 Filed 7–23–09; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Public Meetings for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meetings for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Gates of the Arctic National Park Subsistence Resource Commission (GAAR SRC), Denali National Park Subsistence Resource Commission (DENA SRC), Lake Clark National Park Subsistence Resource Commission (LACL SRC) and Wrangell-St. Elias National Park Subsistence Resource Commission (WRST SRC) will meet to develop and continue work on National Park Service (NPS) subsistence hunting program recommendations and other related subsistence management issues. These meetings are open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments to the SRC. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

For Further Information on the GAAR SRC Meeting Contact: Dave Krupa, Subsistence Manager, Tel. (907) 455–0631, Address: Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, AK 99709 or Clarence Summers, Subsistence Manager, Tel. (907) 644–3603.

GAAR SRC Meeting Dates and Location: The GAAR SRC meeting will be held on Wednesday, August 26, and Thursday, August 27, 2009, from 9 a.m. to 5 p.m. at the Sophie Station Hotel in Fairbanks, AK.

For Further Information on the DENA SRC Meeting Contact: Amy Craver, Subsistence Manager, Tel. (907) 683–9544, Address: Denali National Park and Preserve, P.O. Box 9, Denali Park, AK 99755 or Clarence Summers, Subsistence Manager, Tel. (907) 644–3603.

DENA SRC Meeting Date and Location: The DENA SRC meeting will be held on Thursday, August 20, 2009, from 9 a.m. to 5 p.m. at the Lake Minchumina Community Hall in Lake Minchumina, AK.

For Further Information on the LACL SRC Meeting Contact: Michelle Ravenmoon, Subsistence Manager, Tel. (907) 781–2135 or Mary McBurney, Subsistence Manager, Tel. (907) 235–7891, Address: 240 W. 5th Avenue, Suite 236, Anchorage, AK 99501or Clarence Summers, Subsistence Manager, Tel. (907) 644–3603.

LACL SRC Meeting Date and Location: The LACL SRC meeting will be held on Thursday, August 27, 2009, from 1 p.m. to 5 p.m. at the Pedro Bay Village Council Building in Pedro Bay, AK.

For Further Information on the WRST SRC Meeting Contact: Barbara Cellarius, Subsistence Manager, Tel. (907) 822–7236, Address: P.O. Box 439, Copper Center, AK 99573 or Clarence Summers, Subsistence Manager, Tel. (907) 644–3603.

WRST SRC Meeting Date and Location: The WRST SRC meeting will be held on Tuesday, September 29, 2009, from 9 a.m. to 5 p.m. at the Wrangell-St. Elias National Park Service Office in Copper Center, AK.

The proposed meeting agenda for each meeting includes the following:

1. Call to order.
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Approval of Minutes from Last SRC Meeting.
5. Review and Approve Agenda.
6. Status of SRC Membership.
7. SRC Member Reports.
8. Park Subsistence Manager's Report.
9. National Park Service Staff Reports:
   a. Resource Management Update.
   b. Ranger Division Update.
   c. Subsistence Uses of Horns, Antlers, Bones and Plants EA Update.
10. Federal Subsistence Board Update.
11. Alaska Board of Game Update.
12. Old Business.
13. New Business.
14. Public and other Agency Comments.
15. SRC Work/Training Session.
16. Set Time and Place for next SRC Meeting.
17. Adjournment.

SUPPLEMENTARY INFORMATION: SRC meeting locations and dates may need to be changed based on weather or local circumstances. If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. The SRC meeting

may end early if all business is completed.

Tim A. Hudson,

Acting Regional Director, Alaska.

[FR Doc. E9–17711 Filed 7–23–09; 8:45 am]

BILLING CODE 4312–HK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Oregon, Oregon State Museum of Anthropology, Eugene, OR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Oregon, Oregon State Museum of Anthropology, Eugene, OR. The human remains were removed from an unknown site in eastern Oregon.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the culturally affiliated groups listed in a Notice of Inventory Completion published in the **Federal Register** (73 FR 79908–79909, December 30, 2008), by the addition of the Confederated Tribes of the Colville Reservation, Washington. After publication of the notice, officials of the Oregon State Museum of Anthropology were contacted by the Confederated Tribes of the Colville Reservation, who indicated that the Chief Joseph Band of the Nez Perce is a constituent member of the Confederated Tribes of the Colville Reservation and has aboriginal lands that lie in eastern Oregon. The original Notice of Inventory Completion included the Nez Perce Tribe, Idaho among the culturally affiliated tribes, but not the Chief Joseph Band of the Nez Perce. This notice replaces the one published in the **Federal Register** of December 30, 2008 with the following:

A detailed assessment of the human remains was made by Oregon State Museum of Anthropology professional staff in consultation with representatives of the Burns Paiute Tribe; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Klamath Tribes, Oregon; and Nez Perce Tribe, Idaho.

In 1952, human remains representing a minimum of one individual were donated to the Oregon State Museum of Anthropology by the Crime Detection Laboratory, Oregon Medical School, Portland, OR. Museum records identify the human remains as an ''Indian male from E. Oregon.'' No further information is available. No known individual was identified. No associated funerary objects are present.

The human remains were determined to be Native American based on skeletal morphology. Based on museum records of the provenience, the human remains are most likely culturally affiliated with tribes whose aboriginal lands lie in the area of eastern Oregon. Tribes that have aboriginal lands in eastern Oregon are represented by the present-day Burns Paiute Tribe; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Klamath Tribes, Oregon; and Nez Perce Tribe, Idaho.

Officials of the Oregon State Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Burns Paiute Tribe; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Klamath Tribes, Oregon; and/or Nez Perce Tribe, Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Pamela Endzweig, Oregon State Museum of Anthropology, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5115, before August 24, 2009. Repatriation of the human remains to the Burns Paiute Tribe; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Klamath Tribes, Oregon; and/or Nez Perce Tribe, Idaho may proceed after that date if no additional claimants come forward.

The Oregon State Museum of Anthropology is responsible for notifying the Burns Paiute Tribe; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Klamath Tribes, Oregon; and Nez Perce Tribe, Idaho that this notice has been published.

Dated: July 9, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–17669 Filed 7–23–09; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–681]

In the Matter of Certain Lighting Control Devices Including Dimmer Switches and Parts Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 23, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Lutron Electronics Co., Inc. of Coopersburg, Pennsylvania. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and parts thereof that infringe certain claims of U.S. Patent No. 5,637,930. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation

and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 20, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lighting control devices including dimmer switches or parts thereof that infringe one or more of claims 36, 38, 47, 58, 65, 67, 76, 87, 94, 96, 105, 116, 178, 180, 189, and 197 of U.S. Patent No. 5,637,930, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is— Lutron Electronics Co., Inc., 7200 Suter Road, Coopersburg, PA 18036.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Neptun Light, Inc., 960 North Shore Drive, Lake Bluff, IL 60044.

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 20, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–17723 Filed 7–23–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on July 20, 2009 a Consent Decree in *United States* v. *Tyler Holding Company, Inc., and Delek Refining, Ltd.,* Civil Action No. 6:09cv319 was lodged with the United States District Court for the Eastern District of Texas, Tyler Division.

In a complaint that was filed simultaneously with the Consent Decree, the United States sought injunctive relief and penalties against Tyler Holding Company, Inc., f/k/a La Gloria Oil and Gas Co. (''Tyler Holding''), and Delek Refining, Ltd. (''Delek''), pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged Clean Air Act violations at a petroleum refinery in Tyler, Texas.

Under the settlement, Delek will implement air pollution control practices to reduce emissions of sulfur dioxide and volatile organic compounds (VOCs) from the refinery. Delek will adopt a refinery-wide enhanced flaring protocol to investigate the root cause of flaring incidents. Delek will also undertake an enhanced fugitive emission control program to minimize emissions of VOCs. In addition, Tyler Holding will pay a $624,000 civil penalty for settlement of the claims in the complaint.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or submitted via e-mail to *pubcomment-ees.enrd@usdoj.gov*, and should refer to *United States* v. *Tyler Holding Company, Inc., and Delek Refining, Ltd.,* D.J. Ref. No. 90–5–2–1–08279.

The Consent Decree may be examined at the Offices of the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $18.50 (25 cents per

page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–17622 Filed 7–23–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on June 16, 2009, a proposed Consent Decree (Decree) in the case of *United States* v. *American Laboratories, Inc.*, Civil Action No. 8:09–CV–00194, was lodged with the United States District Court for the District of Nebraska. Under this Consent Decree, the Settling Defendant is required to pay a total of $440,000 in civil penalty for alleged violations of the Clean Air Act, and recover and reuse at 93% of total isopropyl alcohol and implement best available control technology at its pharmaceutical manufacturing plant in Omaha, Nebraska.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States* v. *American Laboratories, Inc.*, D.J. Ref. No. 90–5–2–1–08313.

The Decree may be examined at the Office of the United States Attorney, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102. During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (with attachments) or $8.00 (without attachments) (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–17696 Filed 7–23–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–14]

CBS Wholesale Distributors; Grant of Renewal Application and Dismissal of Proceeding

On January 5, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to CBS Wholesale Distributors (Respondent), of Hephzibah, Georgia. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration which authorizes it to distribute List I chemicals, and the denial of any pending applications to renew or modify the registration, on the ground that his ''registration is inconsistent with the public interest.'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that Respondent is ''currently registered to distribute the List I chemicals pseudoephedrine and ephedrine,'' *id.* at 2, and that both chemicals are ''commonly used to illegally manufacture methamphetamine, a schedule II controlled substance.'' *Id.* at 1. The Show Cause Order alleged that ''there exists a 'gray market' in which certain pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion,'' and that these establishments ''continue to be the primary source for precursors to be diverted to illicit methamphetamine laboratory operations in many states.'' *Id.* at 1–2.

Next, the Show Cause Order alleged that DEA had retained ''an expert in the field of retail marketing and statistics to analyze national sales data for over-the-counter non-prescription drugs.'' *Id.* at 2. The Order alleged that the expert had determined that ''the average small store could expect to sell monthly only about $10.00 to $30.00 worth of pseudoephedrine products,'' and ''that the potential for sales of combination ephedrine products [was] only about one-fourth of those sales levels.'' *Id.*

The Show Cause Order further alleged that Respondent's list I customers ''are almost exclusively convenience stores and gas stations, which are part of the gray market for diversion'' of these products, *id.* at 2, and that Respondent's ''sales of combination ephedrine products are inconsistent with the known legitimate market and known end-user demand for products of this type.'' *Id.* at 3. The Order further alleged that Respondent is ''serving an illegitimate market and [that its] continued registration would likely lead to increased diversion of List I chemicals.'' *Id.*[1]

Respondent timely requested a hearing on the allegations. The matter was placed on the docket of the Agency's Administrative Law Judges (ALJ), and an ALJ conducted a hearing in Savannah, Georgia on December 4–5, 2007. At the hearing, both the Government and Respondent elicited the testimony of witnesses and submitted documentary evidence. Following the hearing, both parties filed briefs containing their proposed findings of fact, conclusions of law, and arguments.

On June 10, 2008, the ALJ issued her recommended decision (ALJ). In her decision, the ALJ found persuasive the expert testimony of the Agency's expert witness that the average monthly sale of ephedrine products to meet legitimate demand is $14.39 and that Respondent's customers were purchasing between five to eighty times this amount. ALJ at 33. The ALJ thus concluded that Respondent's sales of ephedrine products ''to gray market entities are so grossly excessive that there is a high probability that these products are being diverted for illicit purposes, and that this fact alone outweighs'' the evidence that Respondent provided adequate physical security for the products, maintained adequate records, and was selling only to customers who had obtained the required certification under the Combat Methamphetamine Epidemic Act. *Id.* at 34. The ALJ thus also concluded that ''Respondent's continued registration would be inconsistent with the public interest,'' *id.* at 36, and recommended that its registration be revoked and that any pending applications to renew or

[1] The Show Cause Order also alleged that Respondent had ''assisted * * * a former DEA registrant, in maintaining his customer base [of convenience stores and gas stations] for combination ephedrine products, after he surrendered his * * * registration for cause.'' Show Cause Order at 2. The Government, however, offered no evidence in support of this allegation.

modify its registration be denied. *Id.* at 37.

Respondent filed Exceptions to the ALJ's decision. Thereafter, the record was forwarded to me for final agency action.

Having considered the record as a whole (including Respondent's exceptions), I hereby issue this Decision and Final Order. I conclude that the Government's allegation that Respondent's sales levels are so excessive as to warrant the conclusion that its products are being diverted is not proved by substantial evidence. I further hold that because the Government failed to provide notice to Respondent in either the Show Cause Order or its pre-hearing statement that it intended to put in issue Respondent's sales of glass roses, an item which the Government alleges is used as drug paraphernalia, Respondent has not been provided with a full and fair opportunity to litigate the issue. Consistent with the requirements of the Due Process Clause, I conclude that this issue cannot be considered by the Agency. Accordingly, the Show Cause Order will be dismissed. I make the following findings.

Findings

Respondent is a wholesale distributor of sundry items to convenience stores and gas stations which is owned and operated by Charles Marshall, Sr., and Charles Marshall, Jr. (a/k/a Bubba). Tr. 199. Respondent is located in Hephzibah, Georgia. *Id.* at 199, 201–03; GX 1. Among the items Respondent distributes are non-prescription drug products containing ephedrine, Tr. 202, a schedule listed chemical product under the Controlled Substances Act. 21 U.S.C. 802(45); *see also id.* section 802(34).

Respondent has held a DEA Certificate of Registration authorizing it to distribute listed chemicals since 1999. GX 2. While the expiration date of Respondent's registration certificate is August 23, 2006, Respondent applied for a renewal of its registration prior to its expiration date and it is undisputed that its registration has remained in effecting pending the issuance of this Order. GX 2; *see also* 5 U.S.C. 558(c).

Ephedrine (in combination with guaifenesin) is currently approved under the Food, Drug and Cosmetic Act for marketing as a bronchodilator for use in treating asthma. GX 7, at 3–4. Ephedrine is, however, regulated as a List I chemical under the Controlled Substances Act because it is extractable from non-prescription drug products and frequently diverted into the illicit manufacture of methamphetamine, a schedule II controlled substance. 21 CFR 1308.12(d).

Methamphetamine ''is a powerful and addictive central nervous system stimulant.'' *T. Young Associates, Inc.,* 71 FR 60567 (2006). As noted in numerous Agency decisions, the illegal manufacture and abuse of methamphetamine pose a grave threat to this Nation. *See, e.g., id.* Methamphetamine abuse has destroyed numerous lives and families, and has had a devastating impact on many communities. *Id.* Moreover, because of the toxic nature of the chemicals used in making the drug, illicit methamphetamine laboratories create serious environmental harms. *Id.*

The Investigation of Respondent

On March 5, 2005, a DEA Diversion Investigator visited Respondent to conduct a regulatory investigation. Tr. 138–39. The DI met with Charles Marshall, Sr., and Bubba Marshall. *Id.* at 149–50. During the inspection, the DI determined that Respondent was selling combination ephedrine products, which included a brand that is ''notoriously popular [with] methamphetamine traffickers.'' *Compare* GX 4 *with* GX 6 at 12; *see also* Tr. 24. The DI also obtained from Respondent a customer list which indicated that it was selling the products to gas stations, convenience stores, and small markets. Tr. 135 & GX 5.

During the inspection, the DI concluded that Respondent did not provide adequate physical security for the products. Tr. 149. More specifically, the DI found that the products were being left overnight on Respondent's truck and were not being returned to its storage warehouse. *Id.* at 152. Moreover, the DI also noted that Respondent was storing the products in what she described as ''a shed,'' that the shed had a window, and that anyone who knew ''what they were looking for could see the product.'' *Id.* at 156. The DI ''recommended'' to the Marshalls that they cover the windows so that a person could not see the product. *Id.* at 156.

It is undisputed, however, that the Marshalls promptly complied with her recommendation regarding the storage facility.[2] *Id.* at 156–57, 212. It is also undisputed that following the inspection, Respondent ceased its practice of leaving the products on its truck and now returns them to its storage facility each night. *Id.* at 211.

At the hearing, the DI also testified that Respondent's recordkeeping was inadequate because the invoices ''were not complete'' and ''[i]t was very hard to determine * * * who they sold [the products] to, the addresses where the people were located, [and] how much they sold.'' *Id.* at 153. The Government did not, however, offer into evidence any of the invoices the DI reviewed at the time of the inspection. Moreover, in support of its allegation that Respondent sells excessive quantities of the products, the Government introduced into evidence numerous invoices for the period January through March 2007. *See* GX 11. Yet the Government does not point to any of these invoices as evidence that Respondent's recordkeeping practices remain deficient. *See generally* Gov. Proposed Findings of Fact and Conclusions of Law [hereinafter, Gov. Br.]

In support of the principal allegation of its case in chief, the Government called Jonathan Robbin to testify as an expert witness and introduced several exhibits which were prepared by him. *See* GX 8, 9, 14–18. The thrust of Mr. Robbin's presentation was that the overwhelming majority of the commerce in non-prescription drugs takes place at pharmacies, supermarkets, large discount stores, and electronic shopping/mail order retailers, and that convenience stores and gas stations account for only ''a very small percentage of the sales of '' these products. *See* GX 9, at 4. Mr. Robbin further testified that using various data sources such as the U.S. Economic Census, the National Association of Convenience Stores' 2007 State of the Industry Survey, the Mediamark Research, Inc. (MRI) survey of consumers, and scanner data, he determined that the ''expected retail sale of ephedrine * * * tablets in a convenience store ranges between $0 and $29, with an average of $14.39 and a standard deviation of $5.76.'' *Id.* at 8. Mr. Robbin further opined that ''[a] monthly retail sale of $60 of ephedrine/guaifenesin (Hcl) tablets would be expected to occur about once in a million times in random sampling.'' *Id.*

Both Mr. Robbin's declaration and his testimony failed to adequately explain how he arrived at his estimates. While Mr. Robbin apparently used NACS Survey's data which indicates that convenience stores sold a total of $ 292 million of cough and cold remedies nationwide, and asserted under oath that in calculating the average sales per store figure he used the number of stores which actually sell non-prescription

[2] It is also undisputed that in 2003, Respondent had moved to its current location. Tr. 204. At that time, Respondent sought a modification of its registration; a DEA Investigator visited Respondent, inspected its storage facility, and found it satisfactory. *Id.*

drug products, Tr. 107; in another proceeding, it was shown that in calculating the same average sales per store figure, he had used the total number of stores selling any item in the Health and Beauty Care (HABC) line and not the smaller number of stores which sold non-prescription drugs. *See Novelty Distributors,* 73 FR 52689, 52693 (2008).

Moreover, when questioned in this proceeding as to how he determined that sales of combination ephedrine products constitute eight percent of the sales of cough and cold products, Mr. Robbin did not submit the documentation to support this figure and acknowledged that it was ''a missing link in this presentation.'' Tr. 104. While Mr. Robbin maintained ''that this eight percent is an accurate number as reflected by'' the MRI Survey of 50,000 consumers, *id.* at 105, as I also found in *Novelty,* the MRI Survey does not ask questions which are sufficient to establish the extent to which consumers purchase and use ephedrine products.[4] *See* 73 FR 52693–94. Accordingly, as in *Novelty,* I conclude that the Government's estimated sales range to meet legitimate demand for combination ephedrine products is not supported by substantial evidence. I am therefore also compelled to reject Mr. Robbin's testimony regarding the statistical probability that Respondent's ephedrine sales were to meet legitimate demand and that Respondent sold ''combination ephedrine * * * products in extraordinary excess of normal or traditional demand.'' GX 9 at 13; *see also* Tr. at 90–92.

To be sure, the estimated retail sales of some of Respondent's ephedrine customers were several times the average sales for cough and cold products as reported by the NACS Survey. *See* GX 10, at 62 (indicating that in 2005, the average store sold $2,556, and in 2006, the average store sold $2,040 of the products). It appears, however, that the Survey's average sales figure was computed by dividing the total volume of cough and cold product sales ($292 million nationwide) by the total number of convenience stores, regardless of whether the stores sell non-prescription drug products. *See* GX 10, at 4 (indicating that there are a total of 145,119 convenience stores (including both stores that sell and do not sell gasoline) in the US). The average sales of stores actually selling the products is thus likely several times higher than the figure reported by NACS; and in any event, the NACS Survey not report any of the information necessary (such as the median and standard deviation) necessary to determine the statistical probability of various sales levels. The evidence is therefore insufficient to support the Government's allegation that Respondent's ''sales of combination ephedrine products are inconsistent with the known legitimate market and known end-user demand for products of this type.'' Show Cause Order at 3.

The Evidence Related to Respondent's Sales of Glass Roses

The Government also questioned the DI as to whether Respondent sold ''glass roses.''[6] Tr. 129. The DI answered ''yes''; the Government then asked what the items were used for. *Id.* Respondent's counsel promptly objected to the question. *Id.* More specifically, Respondent's counsel objected on two grounds: (1) That the Show Cause Order contained no allegation regarding Respondent's sale of this product, and (2) that the Government did not disclose in its Pre-Hearing Statement that it would elicit testimony from the DI regarding Respondent's sales of the item and its use as drug paraphernalia. *Id.* at 129–31.

The ALJ overruled the objection. *Id.* at 133. The Government again asked the DI whether Respondent sold glass roses; the DI again answered that it did. *Id.*

The Government again asked the DI what glass roses were used for, and once more, Respondent's counsel objected. *Id.* Before ruling on the objection, the ALJ asked ''what are glass roses?'' *Id.* The DI answered that the product is ''a thin glass container with a rose in it and typically what it's used for is somebody could come in and give a rose to a friend. But these have been known to be used for smoking dope. They take the rose out and use them to smoke dope.'' *Id.* at 133–34.

The ALJ then stated she was ''going to provisionally allow this testimony,'' but that Respondent could ''move to strike it after * * * it's complete.'' *Id.* at 134. When the Government stated that the testimony was complete, Respondent moved to strike it. *Id.* The ALJ deferred ruling on the motion, stating that she was taking the matter ''under advisement.'' *Id.* The record, however, contains no indication that the ALJ ever ruled on the motion.

On cross-examination, Bubba Marshall admitted that his business sold glass roses. *Id.* at 215. The Government then asked Mr. Marshall when he found out that this item is ''being used for drug paraphernalia?'' *Id.* at 216. Mr. Marshall answered: ''I heard that they'd been used as drug paraphernalia, I've never witnessed it.'' *Id* . Under further questioning, Mr. Marshall stated that he had ''probably'' known this for ''over a year'' and that he had continued to sell this product. *Id.* at 216–17. Continuing, the Government asked Mr. Marshall whether he had acted responsibly in selling the product. *Id.* at 217. When Mr. Marshall reiterated that he had ''only heard they were used as drug paraphernalia,'' the Government asked him if he had investigated the product's misuse. Mr. Marshall answered ''no,'' and added ''how should I investigate it?'' *Id.*

On re-direct examination, Respondent's counsel asked Mr. Marshall whether the glass roses had uses other than as drug paraphernalia. *Id.* at 223. Mr. Marshall answered: ''[i]t's a novelty.'' *Id.* He also maintained that he had never been told by any of his customers that the item was used as drug paraphernalia and that none of his customers had told him that the item was being purchased in conjunction with ephedrine products. *Id.* at 224.

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to distribute a list I chemical ''may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). Moreover, under section 303(h), ''[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.'' 21 U.S.C. 823(h). In making the public interest determination, Congress directed that the following factors be considered:

[4] For example, the survey asks ''[h]ow may times in'' different time periods a person has used one of numerous products. 72 FR at 52694. While the survey lists a variety of non-prescription cold, sinus, and allergy products, none of the products contains ephedrine. *Id.* Indeed, an ephedrine product is not listed anywhere in the survey.

The survey also asks whether a person has had asthma in the last twelve months and whether they have used a prescription drug, a non-prescription drug, an herbal remedy, or have not treated the condition at all. *Id.* The survey does not, however, ask any further questions regarding the use of non-prescription drugs to treat asthma. *Id.*

It may well be the case that the use of ephedrine products to treat asthma has become so minimal that the designers of the MRI Survey consider the product to be inconsequential. But even if this is so, the Government still has the burden of adequately explaining how it determined that ephedrine sales constitute eight percent of cough and cold sales.

[6] In the pleadings, this item was also referred to a love rose. Both terms are therefore used in this decision.

(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance by the applicant with applicable Federal, State, and local law;

(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) such other factors as are relevant to and consistent with the public health and safety.

Id. section 823(h).

''These factors are considered in the disjunctive.'' *Joy's Ideas,* 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked or an application for a registration should be denied. *See, e.g., David M. Starr,* 71 FR 39367, 39368 (2006); *Energy Outlet,* 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

The Government, however, bears the burden of proof. 21 CFR 1301.44(d). Having considered the entire record in this matter, I conclude that Government has failed to establish that Respondent does not maintain effective controls against diversion. I also conclude that the allegation that Respondent was selling drug paraphernalia is not properly before the Agency. Accordingly, the Government has not established that Respondent has committed acts which render its registration ''inconsistent with the public interest.'' 21 U.S.C. 823(h). The Order to Show Cause will therefore be dismissed.

Factor One—Maintenance of Effective Controls Against Diversion

As established in several agency decisions, this factor encompasses a variety of considerations including, *inter alia,* the adequacy of physical security, the adequacy of recordkeeping, and whether a registrant is selling excessive quantities of the products. *See Holloway Distributing, Inc.,* 72 FR 42118, 42123 (2007); *Rick's Picks, L.L.C.,* 72 FR 18275, 18278 (2007); *John J. Fotinopoulos,* 72 FR 24602, 24605 (2007). In the Order to Show Cause and its Pre-Hearing Statement, the Government provided notice that it would be litigating two issues that are relevant to this factor: (1) The adequacy of Respondent's recordkeeping as purportedly shown by the results of an audit conducted during the March 2005 inspection, and (2) that Respondent was selling volumes of listed chemicals products that are inconsistent with legitimate demand.[7]

At the hearing, however, the Government did not introduce into evidence the audit results. Moreover, while a DI asserted in her testimony that Respondent's recordkeeping was inadequate because its invoices were incomplete, the Government did not offer any of the invoices to show why. Moreover, while the Government obtained numerous other invoices which it used to calculate Respondent's sales levels during the period of January through March 2007, here again, it does not cite any of these invoices as proof of its contention that Respondent's recordkeeping is inadequate. The allegation is thus rejected.

As for the allegation that Respondent was selling excessive quantities of combination ephedrine products, even if only a small percentage of the commerce in non-prescription drugs occurs at non-traditional retailers, neither the testimony nor the written declaration of the Government's expert adequately explains how he calculated the average monthly sales figure or the statistical probability that various sales levels were consistent with legitimate demand. Moreover, in his testimony, the expert acknowledged that there was ''a missing link in this presentation'' with respect to his determination that combination ephedrine products comprise eight percent of the sales of cough and cold products.

In sum, the expert did not provide the underlying documentation necessary to support this critical component of his testimony. Not only did this deny Respondent a meaningful opportunity to challenge the expert's conclusion, *see* Resp. Proposed Findings of Fact and Conclusions of Law at 23; as I have previously held, it also precludes a finding that the expert's conclusions are supported by substantial and reliable evidence. *See* 5 U.S.C. 556(d); *see also Novelty,* 73 FR at 52693–94. The Government's allegation that Respondent was selling excessive quantities of combination ephedrine products (as well as its contention that Respondent does not maintain effective controls against diversion) must therefore be rejected.

Factor Two—Respondent's Compliance With Applicable Laws

At the hearing, the Government was allowed to elicit testimony—over Respondent's objection—of the DI who performed the 2005 inspection that Respondent sold love roses/glass roses, an item which the Government maintains is drug paraphernalia because it is used to smoke illicit drugs. Moreover, during its cross-examination of Bubba Marshall, the Government obtained his admissions that (1) he had heard that this item had been used as drug paraphernalia, and (2) that Respondent had continued to sell the product. Mr. Marshall also maintained, however, that the item had other legitimate uses, such as as a novelty item.

The Government did not, however, allege in the Order to Show Cause that Respondent had sold these items and had violated either Federal or State law in selling them. The Government likewise did not disclose in its pre-hearing statement that Respondent's sales of this product would be at issue in this proceeding. Finally, the Government failed to disclose at any time prior to the hearing that it intended to put this conduct in issue. As explained below, consistent with fundamental principles of Due Process and the requirements of the Administrative Procedure Act, the Government's failure to provide any notice that this allegation would be litigated precludes the Agency's consideration of the issue.

One of the fundamental tenets of Due Process is that Agency must provide a Respondent with notice of those acts which the Agency intends to rely on in seeking the revocation of its registration so as to provide a full and fair opportunity to challenge the factual and legal basis for the Agency's action. *See NLRB* v. *I.W.G., Inc.,* 144 F.3d 685, 688–89 (10th Cir. 1998); *Pergament United Sales, Inc.,* v. *NLRB,* 920 F.2d 130, 134 (2d Cir. 1990). *See also* 5 U.S.C. 554(b) (''Persons entitled to notice of an agency hearing shall be timely informed of * * * the matters of fact and law asserted.'').

To be sure, '' '[p]leadings in administrative proceedings are not judged by the standards applied to an indictment at common law.' '' *Citizens State Bank of Marshfield* v. *FDIC,* 751 F.2d 209, 213 (8th Cir. 1984) (quoting *Aloha Airlines* v. *Civil Aeronautics Bd.,* 598 F.2d 250, 262 (D.C. Cir. 1979)).

[7] At the hearing, the DI also testified that during the March 2005 inspection, Respondent's storage facility did not provide adequate physical security and that Respondent was storing products on its truck overnight and not returning them to its storage unit. While this issue was not raised in either the Order to Show Cause or the Government's Pre-Hearing Statement, Respondent did not object to the testimony. It is undisputed, however, that Respondent promptly complied with the DI's recommendation to improve the security of its storage facility and ceased its practice of leaving the products on its truck. It is thus undisputed that Respondent provides adequate physical security for its products.

Thus, the failure of the Government to disclose an allegation in the Order to Show Cause is not dispositive and an issue can be litigated if the Government otherwise timely notifies a Respondent of its intent to litigate the issue.

The Agency has recognized, however, that ''the parameters of the hearing are determined by the prehearing statements.'' *Darrell Risner, D.M.D.,* 61 FR 728, 730 (1996). Accordingly, in *Risner,* the Agency held that where the Government has failed to disclose ''in its prehearing statements or indicate at any time prior to the hearing'' that an issue will be litigated, the issue cannot be the basis for a sanction. 61 FR at 730. *See also Nicholas A. Sychak, d/b/a Medicap Pharmacy,* 65 FR 75959, 75961 (2000) (noting that the function of pre-hearing statements is to provide Due Process through ''adequate * * * disclosure of the issues and evidence to be submitted in * * * proceedings''); *cf. John Stafford Noell,* 59 FR 47359, 47361 (1994) (holding that notice was adequate where allegations were not included in Order to Show Cause but ''were set forth in the Government's Prehearing Statement'').

As noted above, the Show Cause Order contained no allegations pertaining to Respondent's sales of the love roses and this item's use as drug paraphernalia. Moreover, in its prehearing statement, the Government did not disclose that it intended to elicit testimony from the DI to this effect. The Government thus failed to provide adequate notice to Respondent that its sales of this product would be at issue in the proceeding and it was error for the ALJ to allow the testimony in the Government's case. *See Risner,* 61 FR at 730.

Even if it was properly within the scope of cross examination (in light of Mr. Marshall's testimony as to what products Respondent sold) for the Government to question Mr. Marshall and obtain his admission that he sold love roses, the fundamental error remains. As explained above, the function of notice is to provide Respondent with a ''full and fair opportunity'' to litigate both the factual and legal basis of the Government's theory. While the issue of whether an allegation ''has been fully and fairly litigated is so peculiarly fact-bound as to make every case unique,'' *Pergament*, 920 F.2d at 136, ''the simple presentation of evidence important to an alternative [allegation] does not satisfy the requirement'' that Respondent be afforded with a full and fair opportunity to litigate the alternative allegation. *I.W.G.*, 144 F.3d at 688 (quoting *NLRB* v. *Quality C.A.T.V., Inc.,* 824 F.2d 542, 547 (7th Cir. 1987) (other citation omitted)). Moreover, it is settled that where the Government's case ''focus[es] on another issue and [the] evidence of [an] uncharged violation [is] 'at most incidental,' '' the Government has not satisfied its constitutional obligation to provide a full and fair opportunity to litigate the issue and it cannot rely on the incidental issue as the basis for imposing a sanction. *Pergament*, 920 F.2d at 136 (quoting *NLRB* v. *Majestic Weaving Co.,* 355 F.2d 854, 861–62 (2d Cir. 1966)).

Significantly, while the Government contends in its post-hearing brief that ''Respondent has continued to sell drug paraphernalia even after he was told that the 'love roses' he was selling were used to smoke drugs,'' Gov. Br. at 12, the Government does not cite either the Drug Paraphernalia statute, which sets forth both criteria for determining whether an item constitutes drug paraphernalia and lists numerous items which constitute *per se* drug paraphernalia, *see* 21 U.S.C. 863(d) & (e), or Supreme Court precedent interpreting the statute and setting forth the legal standard for determining whether an item, which may have multiple uses, constitutes drug paraphernalia. *See Posters 'N' Things, Ltd.,* v. *United States,* 511 U.S. 513, 521 n.11 (1994). Notably, in *Posters 'N' Things,* the Supreme Court explained that the Drug Paraphernalia statute creates two categories of drug paraphernalia: those that are designed by the manufacturer for use with illicit drugs, *id.* at 518, and those items which are drug paraphernalia based on the item's ''likely use'' in the community. *Id.* at 521.

The Government's brief offers no explanation as to whether it maintains that the item constitutes drug paraphernalia because it is included on the list of items constituting *per se* paraphernalia, whether it believes the item was designed by its manufacturer for use as paraphernalia, or whether it believes the item is paraphernalia because its ''likely use'' in the community is to ingest drugs. The Government's failure to set forth its legal theory indisputably denied Respondent a meaningful opportunity to present argument to the contrary.

It is acknowledged that Respondent was able to present some evidence on the issue when Mr. Marshall testified on re-direct that the item had an alternate use as a novelty item and that none of his customers had ever told him that the item was being used for drug paraphernalia. Nonetheless, the Government's failure to raise this issue until the hearing itself denied Respondent the opportunity to present other evidence regarding the various factors which are relevant in the determination of whether an item constitutes drug paraphernalia. *See* 21 U.S.C. 863(e) (providing a non-exclusive list of eight factors to be considered including ''the existence and scope of legitimate uses of the item in the community,'' and ''expert testimony concerning its use'').

Of further significance, the focus of the Government's case was Respondent's alleged excessive sales of ephedrine products and not its sales of the love roses. Indeed, in its brief, the Government does not argue that Respondent's sales of the love roses are themselves violations of Federal law which are properly considered in assessing its compliance with applicable laws. *See generally* Gov. Br. at 10–13; *see also* 21 U.S.C. 823(h)(2). Rather, the Government appears to argue that the evidence establishes that Respondent's owners are irresponsible. Gov. Br. at 12 (arguing that Respondent's sales of the love roses are ''a clear sign that [its] owners are indifferent to the methamphetamine problem in this country''). The issue was ''at most incidental'' to the Government's case. *Pergament*, 920 F.2d at 136 (other citations omitted); *see also Majestic Weaving*, 355 F.2d at 861–62. Respondent has therefore been denied a full and fair opportunity to litigate the issue; to consider the evidence as an independent ground to revoke Respondent's registration or impose even a lesser sanction would violate the Due Process Clause and the Administrative Procedure Act.

In sum, the Government has failed to prove by substantial evidence its contention that Respondent does not maintain effective controls against diversion and was selling excessive quantities of ephedrine products. And because the Government failed to provide adequate and timely notice that Respondent's sales of love roses would also be at issue, there is no lawful basis for concluding that Respondent has committed acts which render its registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). The Order to Show Cause must therefore be dismissed.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that the application of CBS Wholesale Distributors for renewal of its DEA Certificate of Registration be, and it hereby is, granted. I further order that the Order to Show Cause issued to CBS

Wholesale Distributors be, and it hereby is, dismissed. This Order is effective immediately.

Dated: July 16, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–17688 Filed 7–23–09; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–77]

Gregory D. Owens, D.D.S.; Suspension of Registration; Grant of Restricted Registration

On August 7, 2007, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to Gregory D. Owens, D.D.S. (Respondent), of Abingdon, Virginia. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration as a practitioner on the ground that his continued ''registration would be inconsistent with the public interest, as that term is defined under 21 U.S.C. 823(f).'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that in 1986, when Respondent moved his dental practice from Tennessee to Virginia, he had failed to obtain a new registration as required by 21 U.S.C. 822. *Id.* The Order further alleged that in 1992, Respondent did not renew his State ''controlled dangerous substances license'' and that he only acquired the proper State and Federal registrations in 1996 after a Virginia Board of Dentistry (''the Board'') inspection. *Id.* Relatedly, the Order alleged that in 1996 and 1997, Respondent had ''continued to prescribe controlled substances in violation of law,'' using his ''long-expired DEA Tennessee registration to facilitate this illegal activity.'' *Id.*

Next, the Show Cause Order alleged that in both November 1997 and May 2000, the Board had placed Respondent's dental license on probation and subjected him to certain conditions. *Id.* at 1–2. The Order also alleged that in August 2005, the State Board had ''issued an Order which concluded that [Respondent] had continuously demonstrated disregard for the Board's orders,'' reprimanded him, and continued him on probation. *Id.* at 2.

Finally, the Show Cause Order alleged that in October 1999, DEA had issued an Order to Show Cause to revoke Respondent's registration, and that on August 2, 2002, my predecessor had issued a Decision and Final Order which granted Respondent a registration which was ''subject to restrictions and conditions'' including ''recordkeeping requirements.'' *Id.* at 1. The Show Cause Order further alleged that in November 2005, Respondent applied for a renewal of his registration and that a compliance review found ''that in 2004 and 2005, [Respondent had] failed to submit the required controlled substance recordkeeping information to DEA in violation of the conditions of [the] previously granted registration.'' *Id.* at 2.

Respondent, through his counsel, timely requested a hearing. The case was assigned to a DEA Administrative Law Judge (ALJ), who conducted a hearing in Abingdon, Virginia, on June 27, 2007. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Following the hearing, both parties submitted briefs containing proposed findings of fact, conclusions of law, and argument.

On March 6, 2009, the ALJ issued her recommended decision (also ALJ). Therein, the ALJ found that Respondent had violated the terms of my predecessor's Final Order by failing to file quarterly reports of the controlled substances he dispensed between the effective date of the Order (Sept. 3, 2002) and December 31, 2002, the date stated as the expiration date on a registration which was subsequently issued to him several months after the expiration date and which was the result of a clerical error. ALJ at 37–39. However, the ALJ further found that Respondent's failure to file the reports after that date should be excused because the Government did not clearly communicate to him that this registration was issued in error and that a registration issued to him on September 8, 2003 (which expired on December 31, 2005) was the ''newly renewed registration'' to which the reporting requirement imposed by the 2002 Order applied. *Id.* at 39. However, she also found that because Respondent did not present evidence that he had submitted the required drug activity logs from August 2002 through December 2002, Respondent's ''lack of evidence proving good faith compliance weigh[ed] against the Respondent's continued registration.'' *Id.* at 40.

The ALJ also found that Respondent had not complied with a second requirement of the 2002 Order—that he notify DEA within thirty days of any action taken against his State ''medical license.'' *Id.* at 40–41. According to the ALJ, Respondent violated this provision because he failed to report the 2005 Board action which continued his probation upon finding that he had committed additional violations. *Id.* at 41. In so holding, the ALJ specifically rejected Respondent's contention that because the 2002 Order had used the term ''medical license'' rather than ''dental license'' in imposing the condition, he had no obligation to report the proceeding to DEA. *Id.*

While the ALJ found that the Government had made out a *prima facie* case to revoke Respondent's registration, she concluded that other factors counseled against a revocation. *Id.* at 47. More specifically, she noted that Respondent treated ''many patients from underserved counties, and a substantial portion of his patients have limited incomes,'' that there was no evidence of diversion or irresponsible prescribing practices on Respondent's part, that Respondent had instituted procedures to ensure the accuracy of his dental records, and that he had begun filing drug activity reports with this Agency following a 2006 inspection. *Id.* at 48. The ALJ thus recommended the revocation of Respondent's registration but that the revocation be stayed for twelve months, and that ''[d]uring pendency of the stay, the Respondent should be allowed to handle controlled substances,'' subject to certain restrictions. *Id.*

Neither party filed exceptions to the ALJ's decision. Thereafter, the record was forwarded to me for final agency action.

Having considered the record as a whole, I hereby issue this Decision and Final Order. I adopt the ALJ's findings of fact and conclusions of law except as noted below. While I accept Respondent's contention that the March 13, 2003 registration was the ''newly renewed registration'' for purposes of the 2002 Order, I note that Respondent did not comply with the Order's requirement pertaining to the submission of quarterly reports even during period in which there is no dispute that he was required to do so. I also hold that Respondent violated the 2002 Order because he failed to report the 2005 Board action to DEA. While I agree that the record does not support an outright revocation of his registration, I conclude that Respondent's lengthy history of regulatory troubles supports the suspension of his registration as well as the imposition of conditions on his new registration. I make the following findings.

Findings

Respondent graduated from the Medical College of Virginia Dental

School, now the Virginia Commonwealth University Dental School, in 1981. Tr. 151. Respondent is licensed to practice dentistry in the State of Virginia and practices in Abingdon (Washington County), Virginia. *Id.* at 150–52, 163. Respondent performs root canals and tooth extractions and often issues a prescription for a controlled substance to treat a patient's post-operative pain. *Id.* at 160.

Respondent's last DEA Certificate of Registration was issued on September 8, 2003, and had an expiration date of December 31, 2005.[1] RX 3; GX 1, at 1. On or about November 21, 2005, however, Respondent submitted a renewal application. GX 2, at 1–2. Accordingly, Respondent's registration has remained in effect throughout the course of this proceeding.

While Respondent currently holds both a DEA registration and a State license, he is not a stranger to either DEA or Board proceedings (nor to Federal criminal proceedings either). Indeed, Respondent has been disciplined by the Virginia Board on three occasions and has been the subject of DEA proceedings on two occasions.

The State Proceedings

The first of these proceedings began in October 1997, when the Board's Executive Director gave notice and ordered Respondent to appear at an informal conference based in part on allegations that an inspection of four of his patient records had found that in two of them, he had ''failed to list drugs prescribed, dispensed, administered and the quantity.'' GX 4, at 2. In the notice, the Board also alleged that ''on divers occasions since March 31, 1986, [Respondent] ha[s] prescribed various controlled substances for patients, including but not limited to Demerol, Percocet, Percodan, Endocet (all Schedule II), and hydrocodone (Schedule III), without a current DEA number.'' *Id.* The Board further alleged that ''from December 31, 1992 to July 1996, [Respondent had] issued said prescriptions without having a current Controlled Substance Registration Certification.'' *Id.* Finally, the Board alleged that ''[o]n or about June 30, 1997, in the United States District Court, Abingdon, Virginia, [Respondent] w[as] found guilty of one count of Failure to report change of address to DEA, a misdemeanor.'' [2] GX 4, at 2. *See also* GX 14 (judgment finding that defendant had pled guilty to violations of 21 U.S.C. 842(a)(5) & (c)(2), fining him $5000, and sentencing him to two years of supervised release).

On November 5, 1997, the Board found the above allegations (as well as others) proved. GX 5, at 2–3. The Board imposed various sanctions including a reprimand, subjected him to one unannounced inspection annually, and placed him on probation indefinitely.[3] *Id.* at 3.

On March 21, 2000, the State Board commenced a second proceeding. This proceeding was based, in part, on a September 9, 1998 review of Respondent's drug inventory and records which found that Respondent had on hand two boxes, which had originally contained twelve bottles each of dihydrocodeine tablets but, at the time of the inspection, held only eight bottles each. GX 6, at 2. The Board further alleged that Respondent had ''failed to take a complete and accurate biennial inventory of the schedule III and V drugs maintained,'' that he ''failed to maintain a record of drugs received to include the date of receipt, the name and address from whom received and the kind and quantity of drugs received,'' and that he had ''failed to maintain a record of drugs received to include the date of receipt, the name and address for which the drugs were dispensed, and the kind and quantity of drugs.'' GX 6, at 2–3.[4]

On May 8, 2000, the Board found that Respondent had violated certain terms of its 1997 Order as well as various provisions of the Virginia Code and the Board of Dentistry Regulations. GX 7, at 1–2, 4. Pertinent to the Controlled Substances Act, the Board specifically found proved the allegations pertaining to Respondent's handling of the dihydrocodeine tablets, including his failure to take biennial inventories of schedule III and V drugs, and to maintain proper records of both the drugs received and dispensed. *Id.* at 3. The Order reprimanded Respondent and continued his probation ''INDEFINITELY,'' subjected him to two unannounced inspections annually and a reporting requirement,[5] and imposed a monetary penalty of $ 5000. *Id.* at 4–5 (emphasis in original).

On July 26, 2005, the Board commenced a third proceeding. This proceeding was initiated ''to receive and act upon [Respondent's] petition for termination of [his] probation, to review [his] compliance with the terms and conditions imposed on [his] license by [the Board's 2000 Order], and to receive and act upon evidence that [he] may have violated certain laws and regulations governing the practice of dentistry.'' GX 8. More specifically, the Board alleged that Respondent had been delinquent in submitting multiple reports, and that an unannounced inspection on February 9, 2005 had found that he ''may have violated'' State law and regulations pertaining to the practice of dentistry.[6] *Id.* at 1–2.

On September 6, 2005, the Board entered an Order which found each of the allegations proved. GX 9, at 2–3. The Order further found that Respondent ''has continuously demonstrated disregard for the Board's Orders.'' *Id.* at 3. The Board thus reprimanded Respondent, levied an $11,000 penalty, and denied Respondent's request to terminate his probation, which was continued indefinitely.[7] *Id.* at 3–4. The Order provided that Respondent's probation ''shall continue from the date this Order is entered and shall continue indefinitely.'' *Id.* at 4.

[1] Respondent previously held a DEA registration which was issued on February 4, 1997, and which expired on December 31, 1999. ALJ at 5. On October 1, 1999, the first DEA proceeding was initiated. RX 42, at 2. On November 8, 1999, Respondent filed a renewal application, *id.* at 9, the effect of which was to extend the expiration date of his registration until the Agency issued its Decision and Final Order resolving the first proceeding, which it did on July 24, 2002. *See Gregory D. Owens,* 67 FR 50461, 50465 (2002) (RX 1, at 5).

On March 13, 2003, Respondent was issued a new Certificate of Registration. RX 2. However, the Certificate stated that it had expired on ''12–31–2002.'' *Id.* According to the registration history, this Certificate was issued in error. Tr. 85. However, the fact that it was issued in error was not communicated to Respondent. *Id.* at 85–86. It is not clear whether Respondent filed a further application to obtain the Certificate which was issued on September 8, 2003.

It is also noted that registration certificate which expired on December 31, 2005, did not contain any indication that it was subject to restrictions. Tr. 53. DEA does not, however, indicate on the face of a certificate whether a registration is subject to restrictions. *Id.* at 53–54.

[2] On or about January 30, 1997, in the United States District Court, Abingdon, Virginia, Respondent pled guilty to five (5) misdemeanor counts of Failure to File Federal Tax Returns, and was sentenced to five months of home detention and fined $10,000. GX 13, at 1, 2 & 5.

[3] The November 24, 1997 order was part of the grounds of the prior DEA action. *See* RX 1, at 2; *see also Owens,* 67 FR 50461, 50462.

[4] The proceeding was also based on the results of a September 8, 1999 inspection, which revealed various deficiencies related to Respondent's alleged violation of the laws and regulations governing the practice of dentistry. GX 6, at 1–2.

[5] Respondent was required to submit quarterly reports of his address and current employment as part of this Order as well as the 1997 Order. *See* GX 7, at 4.

[6] More specifically, the Board alleged that Respondent had ''failed to consistently provide the signature of the dentist completing laboratory work order and the address of the dental practice,'' and that he had kept expired drugs (none of which are controlled under Federal law) in his working stock. GX 8, at 1–2.

[7] Respondent was again required to submit quarterly report noting his address and current employment. GX 9, at 4.

In October 2006, the Board conducted an inspection of Respondent's dental practice and found no deficiencies. RX 13, at 5. Subsequently, in April 2007, the Board notified Respondent that he was in compliance with the Board's Order of September 6, 2005, and that no action would be taken against his dental license. RX 23.

The First DEA Proceeding

On October 1, 1999, the Deputy Assistant Administrator of the Office of Diversion Control issued an Order to Show Cause which sought the revocation of Respondent's registration on the ground that Respondent had committed various acts which rendered his registration inconsistent with the public interest. RX 1, at 1 (*Gregory D. Owens*, 67 FR 50461 (2002)). More specifically, the Show Cause Order alleged that: (1) Between January 1990 and January 1997, Respondent had prescribed approximately 8,600 dosages units of controlled substances using his DEA Registration number, which had expired on August 5, 1986; (2) Respondent had issued controlled-substance prescriptions between May 1 and November 14, 1996, without holding a valid State controlled-substance registration; and (3) Respondent had pled guilty to failing to report his change of address to DEA. RX 42, at 2–3.

Following a hearing, on May 4, 2001, the ALJ issued her recommended decision. *Id.* at 1. Therein, the ALJ found that between January 1990 and January 1997, Respondent had issued controlled-substance prescriptions without a valid DEA registration; she also found that from January 1993 until July 1996, he had issued controlled-substance prescriptions without a valid State registration. *Id.* at 14–15. While in the first proceeding Respondent testified that he did not intend to violate Federal law, the ALJ also found significant that Respondent had prescribed Darvocet (also a controlled substance) at the time when his 1996 application was pending but had yet to be renewed. *Id.* at 15. The ALJ, however, recommended that my predecessor consider ''Respondent's acceptance of responsibility for past offenses and rehabilitation when deciding the likelihood that [his] future conduct * * * will be consistent with the public interest,'' and that Respondent be allowed ''to demonstrate that he can now handle the responsibilities a DEA registrant.'' *Id.* at 18. The ALJ thus recommended that my predecessor grant Respondent a new registration subject to various conditions.[8] *Id.* at 19–20.

On July 24, 2002, the Deputy Administrator issued his final decision in the matter, which was effective no later than September 3, 2002. *See Gregory D. Owens*, 67 FR 50461, 50465 (2002). The Order granted Respondent's application for renewal of his registration subject to the following conditions:

(1) During the duration of the *newly renewed registration,* the Respondent must provide the local DEA office with a log of activities on a quarterly basis that shall state: (1) The date that a controlled substance prescription was written, or such substance was administered; (2) the name of the patient for whom the prescription was written, or to whom the substance was administered; (3) the patient's complaint; (4) the name, dosage, and quantity of the substance prescribed, dispensed, or administered; and (5) the date that the medication was last prescribed, dispensed, or administered to that patient, as well as the amount last provided to that patient. If no controlled substances are prescribed, administered, or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log.

(2) Within 30 days of the event, the Respondent must inform the local DEA of any action taken by any State upon his medical license or upon his authorization to handle controlled substances in that State.

(3) Should the Respondent change employment during *this registration* period, he shall immediately notify the local DEA office that is monitoring his log of activities.

Id. at 50464.

Respondent's Compliance With the 2002 DEA Order

After receiving the ALJ's recommended decision (and before the 2002 Decision and Final Order was issued), Respondent began filing quarterly drug activity logs with the Agency. Tr. 43 & 169; *see also id.* at 70–71 (Respondent's counsel asking DI whether Respondent had started sending in the drug logs following his receipt of the ALJ's decision). While not part of the ALJ's recommended sanction (or subsequently required by the Agency's Final Order), Respondent started using a carbon-copy prescription pad and faxing prescriptions to pharmacies so that the original prescription could go in the patient file and the carbon copy could be maintained as a record to double-check the drug activity log. *Id.* at 135 & 169.

However, following the issuance of the Final Order, Respondent stopped sending in the quarterly activity logs. *Id.* at 42–43; 51. When asked by the Government on cross-examination how many quarterly reports he had sent to DEA following the issuance of the Final Order and the date he thought his obligation to file the reports had ended, Respondent testified that he did not know and did not have that information with him because he was ''just prepared to talk about 2004 and 2005.'' *Id.* at 186. On redirect examination, Respondent further maintained that he was not prepared to testify about what happened in 2001 and 2002 because the Government had not given him notice that this would be at issue in the Show Cause Order and other documents. *Id.* at 191.

Yet on direct examination, Respondent had testified that when he received the ALJ's May 2001 decision, he ''began sending in our quarterly reports.'' *Id.* at 169.[9] He also testified that he believed—and had told the DI—''that the newly renewed registration referred to in the DEA's decision had expired.'' *Id.* at 162.

Regarding the 2002 Order's requirement that he notify the Agency ''within 30 days'' of ''any action taken by any State upon his medical license,'' 67 FR at 50464, Respondent testified that he has never had a medical license and that he has a dental license. Tr. 163 & 178. With respect to the 2005 State Board proceeding, in which the Board had reprimanded him, fined him, rejected his petition to terminate and continued him on probation, Respondent maintained that the Board had not taken action against his license because there was no change in the status of his license. *Id.* at 165. Amplifying this testimony, Respondent stated: ''My license was under probation and it did not change. Nothing changed

[8] My predecessor adopted the ALJ's recommended conditions nearly verbatim with the exception of the first recommended condition which was that Respondent take a course in the identification and handling of controlled substances. RX 42, at 19.

[9] Respondent objected to the Government's questioning the DI regarding Respondent's failure to submit the drug logs in the years prior to 2004 and 2005 on the ground that neither the Show Cause Order nor the Government's pre-hearing statement had disclosed that this would be at issue. Tr. 44–46. Respondent, however, did not object when the Government had previously asked the DI: ''What log of activities were received by DEA from [Respondent] after the date of the issuance of this order on August 2, 2002?'' and the DI answered: ''There were no activity logs or drug logs submitted after August of 2002 until after we visited Dr. Owens' office in 2006.'' *Id.* at 42–43. Notably, when the DI continued with his answer and the Government's counsel interrupted him, Respondent's counsel did not object to the line of questioning but only that ''the witness be allowed to complete his answer.'' *Id.* at 43. The DI then explained that in 2007, Respondent's attorney had ''submitted all the drug logs that were kept.'' *Id.*

Respondent's objection was untimely and was properly overruled for this reason as well.

on my license itself. I guess you could split hairs.'' *Id.* at 181. He also maintained that his obligation to report any Board actions against his license had expired on December 31, 2002, based on the expiration date of the registration certificate, although he acknowledge that ''I don't think it's quite as clear as on the other one.'' *Id.* at 188.

The 2006 DEA Investigation

On November 21, 2005, Respondent submitted an application to renew his registration. GX 2, at 2. On January 19, 2006, two DEA DIs, who were accompanied by a member of the Virginia State Police, inspected Respondent's office and inquired as to why Respondent had not submitted the drug activity logs in 2004 and 2005. Tr. 23, 33–34. Respondent told the investigators that ''he wasn't aware of that'' and showed them a copy of the ALJ's ruling. *Id.* at 65–66. The investigators also determined that Respondent did not have any Federally controlled substances on the premises and reviewed a drug log that he had kept since September 18, 2005. *Id.* at 34–35; *see also* GX 10.

The DIs then looked at Respondent's appointment book and selected sixty-eight patient records to review to determine whether the controlled substances Respondent had prescribed had been recorded in the drug log. *Id.* at 38–39. According to the DI, there were seven instances in which a prescription which was recorded in a patient file was not listed in the drug log. *Id.* at 39, 60–61. The DI further acknowledged that Respondent consented to the inspection and was cooperative, *id.* at 54–55, and that he had no evidence that Respondent engaged in the diversion of controlled substances. *Id.* at 58.

The next day, Respondent had a telephone conversation with one of the DIs and asked him ''exactly what was the term of a newly renewed registration.'' *Id.* at 63. The DI did not directly answer the question and instead told Respondent that ''we would take a look at'' the information that had been obtained. *Id.* According to the DI, during the conversation, Respondent told him that he had found a letter which explained what the requirements were.[10] *Id.* at 67. Respondent testified that he ''didn't believe'' that he was required to submit records in 2004 and 2005 because he thought the ''newly renewed registration referred to in the DEA's decision had expired.'' *Id.* at 161–62.

In his testimony, the DI further testified that the Certificate of Registration which was issued on March 13, 2003, and which had expired on December 31, 2002, was not his new registration, but rather ''a continuation of his previous registration.'' *Id.* at 84. He further maintained that this registration certificate was issued in error and pointed to an administrative code, which indicated as much, on Respondent's registration history. *Id.* at 85; *see also* GX 15. However, the DI was aware of no evidence that this information had been communicated to Respondent. *Id.* at 86.

On March 16, 2006, Respondent's counsel submitted the drug activity logs from July 2002 through December 2005 to the DI. RX 22. In his letter forwarding the logs, Respondent's counsel maintained that, based on the 2002 Order, Respondent ''is under no duty to provide these to the DEA.'' [11] *Id.* Relatedly, Respondent testified that he submitted the drug activity logs out of ''an abundance of caution'' because it was ''difficult to know exactly what [he was] supposed to do.'' Tr. 183.

Respondent's Evidence Regarding Remedial Measures

On September 2, 2006, Respondent entered into a consulting agreement with a registered nurse, who was to review his compliance with DEA regulations on a monthly basis. RX 5, at 1, 5. Moreover, at the end of each month, the consultant audits all the patient charts that are listed in the drug activity log. Tr. 106. The consultant also goes through the appointment book and randomly selects twenty-five patient charts which she reviews to see if any prescriptions were not entered into the drug activity log. *Id.* The entries in the drug activity log are also checked against the patient charts for accuracy. RX 6. The consultant then provides a monthly report of both the drug activity log audit and the random patient chart audit. Tr. 106; RXs 7–13. According to the consultant, Respondent's recordkeeping is now ''well organized'' and ''efficient'' and Respondent is capable of providing ''accurate'' records to this Agency.[12] Tr. 113–14.

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). With respect to a practitioner, the CSA requires that the following factors be considered in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

These factors are considered in the disjunctive; I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[] appropriate'' in determining whether a registration should be revoked and/or an application should be denied. *Robert A. Leslie,* 68 FR 15227, 15230 (2003). Moreover, case law establishes that I am ''not required to make findings as to all the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).[13]

[10] The letter is not in the record.

[11] Most of the logs pertaining to this period (including those pertaining to the period between the issuance of the 2002 Order and December 31, 2002) are not in evidence.

The ALJ found that these drug activity logs did not meet the requirements of the 2002 Decision and Order as they ''failed to record when and the amount of controlled substances that had last been provided to the patient.'' ALJ at 18 (citing Tr. 185; RX 42, at 19; RX 1, at 4). It is noted that the Drug Log for the period September 18, 2005, through January 18, 2006, was frequently missing information such as ''the patient's complaint,'' as well as the date the medicine was last prescribed to the specific patient and the quantity. *Compare* GX 10 with GX 3, at 6–7. Neither party, however, submitted the drug logs for the period between the issuance of the 2002 Order and December 31, 2002.

[12] Respondent offered into evidence affidavits of three other dentists, who variously declared that he is ''an asset to the dental community in the Abingdon, Virginia area,'' ''an excellent asset to the dental and general community,'' and an ''excellent dentist who uses good dental techniques.'' RXs 15–17.

Respondent also put on extensive evidence regarding the socioeconomic status of his patients and the shortage of dentists in the area where he practices. However, for reasons discussed below, I conclude that it is not necessary to engage in fact-finding on these issues.

[13] DEA has the burden of proving that the requirements for revocation are met. 21 CFR 1301.44(e). However, if the Government makes out a *prima facie* case, the burden shifts to the Respondent to demonstrate that the continuation of his registration is consistent with the public interest.

Factor One: The Recommendation of the State Licensing Board

As found above, Respondent had been the subject of three separate State board proceedings and been disciplined on each occasion. Moreover, the first two proceedings involved violations which did not simply involve violations of State rules pertaining to the practice of dentistry but also violations of the CSA and DEA's regulations.

The ALJ noted that in the 2002 Decision and Order, the Agency had concurred with her conclusion that because the Board had not restricted Respondent's ability to handle controlled substances, this ''demonstrate[d] that the Board does not believe Respondent poses a danger to the public health and safety, to the extent that he cannot be trusted with the serious responsibilities of practicing dentistry and handling controlled substances.'' ALJ at 34–35 (quoting *Owens*, 67 FR at 50463). Remarking on the 2005 Board proceeding and the April 2007 Board letter which closed the case, the ALJ found it ''significant that in all orders, the Board chose not to restrict Respondent's handling of controlled substances,'' and that this factor ''weighs in favor of continuing the Respondent's DEA Certificate of Registration.'' *Id.* at 35–36.

While DEA has frequently considered State board proceedings which do not result in a revocation or suspension under this factor, the Agency ''maintains a separate oversight responsibility with respect to the handling of controlled substances and has a statutory obligation to make its independent determination'' as to whether the continuation of an existing registration is in the public interest. *Mortimer B. Levin*, 55 FR 8209, 8210 (1990); *see also Jayam Krishna-Iyer*, 74 FR 459, 462 (2009).[14] Accordingly, while I concur in the ALJ's conclusion regarding this factor, I give it only nominal weight in the public interest inquiry. *See Martha Hernandez*, 62 FR 61145, 61147 (1997) (finding that State board decisions are relevant, although not dispositive, on the issue of granting or denying a DEA application).

Factors Two and Four: Applicant's Experience in Dispensing Controlled Substances and Compliance With Applicable State, Federal or Local Law

The record in this matter establishes a pattern of Respondent's non-compliance with the requirements of both State and Federal Law relating to controlled substances. More specifically, for at least seven years, Respondent violated Federal law by issuing prescriptions for both schedule II and III controlled substance based on an expired registration.[15] *See* 21 U.S.C. 822(a)(2); *see also* 21 U.S.C. 843(a)(2). He also violated Virginia law, which at the time required that he also hold a State registration, for more than three years.

Subsequently, the Virginia Board found that Respondent was in violation of various State rules because he had on hand a stock of schedule III controlled substances and was not taking inventories and maintaining both receiving and dispensing records.[16] Moreover, the findings of the Board establish that Respondent could not account for eight bottles of dihydrocodeine, a schedule III controlled substance.[17] GX 7, at 3.

The central issue in this case was, however, Respondent's compliance with the terms of this Agency's 2002 Order. More specifically, the Government contended that Respondent had failed to comply with the requirements that he submit drug activity logs each quarter and notify DEA of any action taken against his ''medical license.''

With respect to the first issue, Respondent raises several contentions. First, he argues that his rights under the Due Process Clause and the Administrative Procedure Act were violated because the Government was allowed to introduce evidence regarding his compliance with the 2002 Order pertaining to years which were not alleged in the Show Cause Order (which alleged that he had not complied during the years 2004 and 2005) or in the Government's Pre-Hearing Statement. Resp. Br. at 21. Respondent also argues that ''he had no notice to prepare for or to rebut the testimony as to the years before 2004.'' *Id.* Relatedly, Respondent contends that ''[o]ver [his] objection, the ALJ allowed the Government to inquire into [his] reporting before 2004.'' *Id.* at 25.

Respondent did not, however, timely object to the Government's questioning the DI as to what logs have been received after the issuance of the Order on August 2, 2002. Tr. 42–43. Indeed, Respondent's counsel objected that the Government had not allowed the DI to complete his answer. *Id.* at 43. Nor did Respondent object to the Government's subsequent question as to what logs he had submitted prior to the issuance of the 2002 Order. *Id.* Rather, Respondent did not object until after the Government had asked several additional questions. *Id.* at 43–44. I thus conclude that Respondent waived his objection to the admission of this evidence.[18]

Finally, even if it was error for the ALJ to allow the Government to pursue this line of questioning, the error was not prejudicial. *See* 5 U.S.C. 706. Notably, on direct examination, Respondent testified that after receiving the ALJ's recommended decision, which was issued in May 2001, ''[W]e began sending in our quarterly reports.'' Tr. 168–69. Thus, Respondent went into areas that pre-dated the time-frame referenced in the Show Cause Order and Government's Pre-Hearing Statement. Moreover, on direct examination, Respondent maintained that he was not required to file the reports because he believed ''that the newly renewed registration referred to in the [2002] decision had expired.'' *Id.* at 162. Given his testimony that he had started sending in the reports after receiving the ALJ's May 2001 decision and that he believed his obligation ended based on the expiration of the erroneously issued registration, the contention that his compliance during the four-month period in which it is undisputed that he was required to submit the reports is not properly at issue, amounts to trying to have his cake and eat it too.[19]

I am also unpersuaded by Respondent's contention that he was ''not prepared to testify about what happened in 2001 and 2002'' because

[14] As my predecessor noted in the 2002 Decision and Order, the various orders issued in the State board proceedings are not in any sense an ''official recommendation regarding this proceeding's outcome.'' 67 FR at 50463. Moreover, a State board may apply a different standard than the public interest standard applicable under the CSA and thus consider factors which DEA does not consider relevant. Thus, I give this factor only nominal weight.

[15] I further note Respondent's misdemeanor conviction for failing to notify DEA of his address change. *See* 21 U.S.C. 823(f)(3).

[16] Under DEA regulations, ''[a] registered individual practitioner is required to keep records * * * of controlled substances in Schedules II, III, IV, and V which are dispensed, other than by prescribing or administering in the lawful course of professional practice.'' 21 CFR 1304.03(b).

[17] It is unclear, however, how many tablets were in each bottle.

[18] Moreover, on cross-examination Respondent's Counsel asked the DI whether Respondent had started sending in the drug logs following his receipt of the ALJ's Decision. Tr. 70–71.

[19] Furthermore, while the ALJ denied Respondent's request for a continuance to gather the evidence that would show that the logs were sent in during the period between the issuance of the 2002 Order and December 2002, the ALJ made clear that Respondent could renew his request at ''the conclusion of the presentation of [the] evidence'' and noted that the record could be left open for this purpose. Tr. 48–49. Respondent did not, however, request that the record be left open or submit any such reports.

the Government failed to give notice. Tr. 191. Respondent's testimony that he started sending in the reports after receiving the ALJ's May 2001 decision demonstrates that he was obviously prepared to discuss what happened in 2001 and 2002. I therefore reject Respondent's contention that his rights under the Due Process Clause and APA were violated because the Government introduced evidence regarding his non-compliance with the Order.

As found above, the record establishes that Respondent did not submit any drug activity logs as required by the 2002 Decision and Final Order. I conclude, however, that Respondent cannot be deemed to have violated the terms of the Order subsequent to December 31, 2002.

The Order expressly stated that it was granting Respondent's renewal application and that it was effective ''no later than September 3, 2002.'' GX 3, at 7. Thus, while the certificate issued on March 13, 2003, indicated that it had expired on December 31, 2002, and the evidence indicates that it was issued in error, the registration could be reasonably interpreted as having granted authority to Respondent for the period between September 3 and December 31, 2002.[20]

Throughout this proceeding, the Government has contended that Respondent's obligation to submit the quarterly drug activity logs did not end with the expiration date indicated on this registration. The Government further contends that the actual registration the 2002 Order referred to was that which issued on September 8, 2003, and which expired on December 31, 2005.

It is acknowledged that my predecessor likely used the phrase—''[d]uring the duration of the newly renewed registration''—intending that the first condition would last for the period of a full registration. Under DEA's regulations, a practitioner's registration is typically valid for thirty-six months, *see* 21 CFR 1301.13(d)), and not for only four months.

The Government ignores, however, that Due Process requires that when the Agency imposes conditions on a registration, those conditions must be ''sufficiently clear to inform'' a registrant as to ''what conduct will result in'' a violation. *United States* v. *Ashland, Inc.,* 356 F.3d 871, 874 (8th Cir. 2004) (citing *United States* v. *Guagliardo,* 278 F.3d 868, 872 (9th Cir. 2002)). Relatedly, the Government ignores that it never informed Respondent that the March 13, 2003 registration was issued by mistake. It also ignores that it was not until more than three years later that it informed Respondent of its view that the September 8, 2003 registration was ''the newly renewed registration'' which governed the duration of his obligation to file the drug activity logs.

Respondent therefore cannot be held to have violated the 2002 Order because he failed to file the drug activity logs after December 31, 2002. Respondent did, however, violate the Order because he did not file the logs even during the period when it was clear that he was required to do so.

As found above, the record also establishes that Respondent did not report the 2005 Board proceeding to the Agency. Respondent offers three arguments in response. First, relying on the 2002 Order's mistaken reference to ''any action taken * * * upon his medical license,''[21] he contends that he ''has never held a medical license,'' and that ''[t]he [S]tate of Virginia has never taken any action against [his] non-existent medical license.'' Resp. Br. at 21.

The argument is too clever by half. Precisely because Respondent has never held a medical license, and the prior DEA proceeding discussed an action by the State Board of Dentistry which imposed conditions on his dental license, *see* RX 42, at 13–14, Respondent had ample reason to know that the 2002 Order had mistakenly referred to his ''medical license'' and that the purpose of the condition was to require him to report any action taken upon his dental license.

Next, Respondent contends that the 2005 Board action ''occurred long after [his] duty to report to the DEA lapsed.'' Resp. Br. at 21. However, in contrast to the other two conditions it imposed, the 2002 Order did not limit the duration that this condition would be in effect. *See* GX 3, at 6–7. This is hardly surprising given that at the time the Order was issued, the State Board had placed him on probation ''INDEFINITELY'' and had imposed various conditions. *See* GX 7, at 4–5. Nor is it surprising given Respondent history of non-compliance with the Board's orders. Most significantly, the 2002 DEA Order was ''sufficiently clear to inform'' Respondent as to his obligation to report the 2005 Board action. *Ashland,* 356 F.3d at 874.

Finally, Respondent maintains that he had no obligation to report the 2005 Board action because the Board ''took no action against [his] dental license'' and ''[h]e remained on probation throughout the relevant period.'' Resp. Br. at 21. In the 2005 proceeding, however, the Board (in addition to reprimanding and fining him), rejected Respondent's petition to terminate his probation, and again, continued his probation ''indefinitely.'' GX 9, at 3. Moreover, the Board stated that ''[v]iolation of this Order may constitute grounds for suspension or revocation of [Respondent's] license.'' *Id.* at 4. The Board's Order thus clearly constituted ''action taken by any State upon his * * * license.'' GX 3, at 7.

I therefore conclude that Respondent violated the terms of the Agency's 2002 Order by failing to report the 2005 Board action as well as by his failure to file the quarterly drug activity logs during the period between the issuance of the Order and December 31, 2002. These failures alone establish that Respondent has committed acts which ''render his registration * * * inconsistent with the public interest'' and which support the suspension or revocation of his registration. 21 U.S.C. 824(a). Moreover, even though Respondent's misconduct, which was the subject of the 2002 Order, occurred some time ago, it buttresses this conclusion. *See* 21 U.S.C. 823(f)(2) (directing the Attorney General to consider the registrant's experience in dispensing controlled substances).

Factor Five—Such Other Conduct Which May Threaten Public Health and Safety

Under this factor, the ALJ made extensive findings regarding the shortage of dentists in the region where Respondent practices and the percentage of his patients who come from underserved areas. The ALJ further noted that in *Pettigrew Rexall Drugs*, 64 FR 8855 (1999), a case involving a pharmacy, the Agency had considered that the ''pharmacy was located in an underserved community'' and that this was a factor that ''impacted the public interest.'' ALJ at 46 (citing 64 FR at 8860). The ALJ then reasoned that even though Respondent is not ''*physically* located in an underserved community * * * the focus should be on *who* is actually being served by the practice.'' *Id.* Because Respondent has 561 patients from underserved counties, and many of these patients have limited incomes, the ALJ concluded that this factor weighs

[20] Under the APA, Respondent's November 1999 renewal application provided authority only ''until the application ha[d] finally been finally determined by the agency.'' 5 U.S.C. 558(c). The final determination on this application was the 2002 Decision and Final Order which granted the application.

[21] *See also* RX 42, at 19 (ALJ' s recommended sanction that ''Respondent must inform the DEA of any action taken by any State upon his medical license'').

against the imposition of either a suspension or revocation of his registration. *Id.* at 48.

DEA has never applied this rule in a subsequent case, and I conclude that it would be ill-advised to extend it to the case of a prescribing practitioner. The public interest standard of 21 U.S.C. 823(f) is not a freewheeling inquiry but is guided by the five specific factors which Congress directed the Attorney General to consider; consideration of the socioeconomic status of a practitioner's patient population is not mandated by the text of either 21 U.S.C. 823(f) or 824(a)(4), which focus primarily on the acts committed by a practitioner.

Moreover, where, as here, the Government has made out a *prima facie* case that a practitioner has committed acts which render his registration inconsistent with the public interest, the relevant inquiry is (and the Agency's longstanding rule has been to examine) whether the practitioner has put forward ''sufficient mitigating evidence to assure the Administrator that he can be entrusted with the responsibility carried by such a registration.'' *Medicine Shoppe-Jonesborough*, 73 FR 364, 387 (2008) (citing cases). As noted in numerous cases, this inquiry looks to whether the registrant has accepted responsibility for his misconduct and undertaken corrective measures to prevent the re-occurrence of similar acts. Whether a practitioner treats patients who come from a medically underserved community or who have limited incomes has no bearing on whether he has accepted responsibility and undertaken adequate corrective measures.

Finally, contrary to the ALJ's understanding, extending the holding of *Rexall Pettigrew* would likely cause greater harm to the public interest. The diversion of prescription drugs has become an increasingly serious societal problem, which is particularly significant in poorer communities whether they are located in rural or urban areas. *See, e.g., George C. Aycock*, 74 FR 17529, 17544 n.33 (2009); *Laurence T. McKinney*, 73 FR 43260 (2008); *Paul H. Volkman*, 73 FR 30630 (2008); *Medicine Shoppe-Jonesborough,* 73 FR at 363. *See also* U.S. General Accounting Office, *PRESCRIPTION DRUGS: OxyContin Abuse and Diversion and Efforts to Address the Problem* 31–32 (Dec. 2003) (noting that ''the Appalachian region, which encompasses parts of Kentucky, Tennessee, Virginia, and West Virginia, has been severely affected by prescription drug abuse, particularly pain relievers * * * for many years''). The residents of this Nation's poorer areas are as deserving of protection from diverters as are the citizens of its wealthier communities, and there is no legitimate reason why practitioners should be treated any differently because of where they practice or the socioeconomic status of their patients.[22] I thus conclude that this factor does not support the continuation of Respondent's registration.

Sanction

Where, as here, the Government has made out a *prima facie* case that a practitioner has committed acts which render his registration inconsistent with the public interest, the practitioner must put forward ''sufficient mitigating evidence to assure the Administrator that he can be entrusted with the responsibility carried by such a registration.'' *Medicine Shoppe-Jonesborough*, 73 FR 364, 387 (2008) (citing cases). As noted in numerous cases, this inquiry looks to whether the registrant has accepted responsibility for his misconduct and undertaken corrective measures to prevent re-occurrence of similar acts.

As found above, Respondent violated the terms of the restricted registration which the Agency granted him by failing to submit a quarterly drug activity log during the four- month period over which there is no dispute that he was required to submit the log. Moreover, Respondent failed to report the 2005 Board Action. When coupled with the acts which gave rise to the 2002 Order, Respondent has demonstrated a disturbing record of non-compliance with both State and Agency requirements.

Respondent's evidence regarding his acceptance of responsibility is equivocal. While it appears that Respondent started sending in drug logs upon receipt of the ALJ's 2001 decision, he offered no explanation as to why he stopped upon receiving the 2002 Order. Moreover, while I acknowledge that a registrant can in good faith dispute whether a regulatory provision requires certain action, Respondent's arguments with respect to his failure to report the 2005 Board action (*e.g.*, that the Order did not apply to him because he has a dental license and that the State took no action against him when it rejected his petition to terminate and continued his probation) were generally disingenuous.

I acknowledge that Respondent also instituted corrective measures to improve his documentation of his prescribing practices, including bringing in a consultant to audit his records.[23] I also note that there is no evidence that Respondent has prescribed controlled substances without ''a legitimate medical purpose.'' 21 CFR 1306.04(a). I therefore conclude that the record as a whole does not support the revocation of Respondent's registration.

However, Respondent has a lengthy history of non-compliance with both DEA and State requirements and did not appreciate the forbearance which this Agency exercised in the 2002 Order. Moreover, in light of the wording of the 2002 Order and the circumstances surrounding the issuance of the registration certificate in March 2003, Respondent has not been required to comply with the intended requirements of that Order. I therefore conclude that Respondent should be granted a new registration subject to the following conditions.

(A) Respondent shall submit to the local DEA office, a drug activity log on a quarterly basis, no later than twenty (20) days from the last day of the quarter which shall be March 31, June 30, September 30, and December 31 of each calendar year. Each log must contain

[22] It is acknowledged that there is no evidence that Respondent has diverted controlled substances. However, in assessing what sanction to impose, the Agency already considers the extent and egregiousness of a practitioner's misconduct. Accordingly, it is not clear what principle exists for determining when evidence that a practitioner treats underserved patients should be considered and when it should not be.

Beyond this, the ALJ's reasoning suggests how unworkable applying this standard would be. As she explained: ''the focus should not simply be on whether a dental practice is *physically* located in an underserved community; this is simply too narrow a view. Rather, the focus should be on *who* is actually being served by the practice.'' ALJ at 46. The ALJ then noted that 561 of his patients (notably, only about ten percent of his patients) were from underserved areas, and that a majority of his patients have limited finances.

The ALJ's reasoning begs the question of how many patients from underserved areas would a practitioner have to treat to claim the benefit of the rule. As for her reliance on the fact that a majority of Respondent's patients have limited incomes, determining what constitutes a patient with a limited income or finances and how many patients (or what percentage of patients) a practitioner must have to claim entitlement to this rule, would inject a new level of complexity into already complex proceedings and take the Agency far afield of the purpose of the CSA's registration provisions, which is to prevent diversion. Finally, while I decline to extend the *Pettigrew* rule to prescribing practitioners, I further note that Respondent offered no evidence that he charges his patients who have ''limited finances'' lower fees for his services.

[23] In setting this sanction, I place no weight on the DI's testimony that during the 2006 inspection, he found seven discrepancies between the drug activity logs and Respondent's patient records because the discrepancies did not involve the period in which it is clear that Respondent had an obligation to maintain the logs. I also place no weight on Respondent's evidence regarding the drug logs he eventually submitted for the period in which the requirement clearly applied. Even were I to ignore that the logs were submitted years late, because Respondent did not submit copies of these documents for the record, it is unclear whether they contained all of the information required by the 2002 Order.

the following: (1) The date that a controlled substance was administered, or dispensed (whether by prescription or actual delivery of the drug); (2) the name of the patient to whom a controlled substance was administered or dispensed (whether by prescription or actual delivery); (3) the patient's dental complaint; (4) the name, dosage, and quantity of the substance prescribed, dispensed or administered; and (5) the date that the medication was previously prescribed, dispensed or administered to that patient if the medication was prescribed, dispensed or administered in the last year, as well as the amount last provided to that patient. If no controlled substances are prescribed, administered, or dispensed during a given quarter, Respondent shall submit a letter to the DEA office indicating that there was no activity to report during the quarter.

(B) Within 15 days of the event, Respondent shall inform the local DEA office of any proceeding initiated against him by a State licensing board, whether the board regulates his professional practice or his authority to prescribe controlled substances. In addition, within 15 days of the event, Respondent shall inform the local DEA office of any interim or final order of a State licensing board which imposes a sanction, whether the sanction be a reprimand, a fine, a civil penalty, a probationary period, a rejection of a petition for termination of probation, an imposition of a condition, a suspension, or a revocation of any State professional license or authority to prescribe a controlled substance.

(C) In the event that Respondent changes employment during this three-year period, he shall immediately notify the local DEA office that is monitoring his drug activity logs.

To ensure that there is no confusion as to the duration of these conditions, all three conditions shall remain in effect for a period of three years from the date of this Order's publication in the **Federal Register**.

Moreover, because Respondent has not previously appreciated the seriousness of these proceedings and his obligation to comply with the CSA, the Agency's rules, and the conditions imposed pursuant to the 2002 Order, I further conclude that a period of outright suspension of his registration is warranted. Accordingly, while I grant Respondent a new registration, said registration will be suspended outright for a period of three months.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823 and 824, as well as 28 CFR 0.100(b) and 0.104, I hereby order that the application of Gregory D. Owens, D.D.S., to renew his DEA Certificate of Registration, be, and it hereby is, granted subject to the conditions set forth above. I further order that the DEA Certificate of Registration issued to Gregory D. Owens, be, and it hereby is, suspended for a period of three months from the effective date of this Order. This Order is effective August 24, 2009.

Dated: July 16, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–17681 Filed 7–23–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–59]

Roy E. Berkowitz, M.D.; Revocation of Registration

On August 26, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Roy E. Berkowitz, M.D. (Respondent), of Slidell, Louisiana. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BB0492912, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the grounds that Respondent does ''not have authority to prescribe controlled substances in the State of Louisiana,'' and that his ''continued registration is inconsistent with the public interest.'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that as a result of prescriptions for controlled substances which Respondent issued in 2006 and 2007 that were inconsistent with State rules and regulations, Respondent entered into a Consent Order with the Louisiana State Board of Medical Examiners, which ''strips [Respondent] of authority to handle controlled substances in the State of Louisiana, the state in which [he is] registered with DEA.'' *Id.*

Respondent requested a hearing on the allegations, and the matter was assigned to an Administrative Law Judge (ALJ), who commenced pre-hearing procedures. Thereafter, the Government moved for summary disposition on the ground that Respondent ''currently lacks authority to handle controlled substances in the State of Louisiana—his state of registration.'' Gov. Mot. at 1.

In support of its motion, the Government attached a declaration of a DEA Diversion Investigator (DI). Therein, the DI stated that on October 15, 2008, she had queried the Louisiana State Board of Pharmacy's Web site to determine Respondent's license status, and found that ''the Controlled Dangerous Substance license #33853 of Roy E. Berkowitz, M.D. was delinquent, having expired on September 25, 2008.'' *Id.* at Appendix I.

The ALJ allowed the Respondent to file a response to the motion through October 30, 2008. Moreover, on October 29, 2008, the ALJ granted Respondent an extension of the due date until November 6, 2008, on which date Respondent filed his response.

Therein, Respondent noted that while the Show Cause Order had relied on the State Board's Consent Order, the motion for summary disposition relied on a ''declaration * * * asserting that a license issued by the Louisiana Board of Pharmacy to [Respondent] expired on September 25, 2008.'' Resp. at 1. Respondent maintained that the Government was improperly changing its theory of the case, and argued that ''[t]he DEA without leave to amend the Order to Show Cause has sought to change the underlying basis of the case.'' [1] *Id.* at 2–3.

Next, Respondent argued that the Agency lacks authority to revoke his registration because in his view, 21 U.S.C. 824(a)(3) requires *both* a suspension, denial or revocation of the state license or registration, and that the practitioner no longer be authorized by state law to handle controlled substances. *Id.* at 3–4. In support of his contention, Respondent attached his declaration in which he stated that he submitted his application for renewal of his Louisiana Controlled Dangerous Substance License in July 2008, and that he was ''advised by the Louisiana Board of Pharmacy that this agency was unable to process'' his application. *Id.,* Ex. A at 1. The declaration further asserted that the Louisiana Board of Pharmacy ''did not enter an order'' denying, suspending or revoking Respondent's application. *Id.* at 1–2. Thus, Respondent argued that the Government's motion should be denied ''[b]ased upon a failure to establish the elements required under 21 U.S.C. 824(a)(3) and 21 U.S.C. 824(a)(4).'' Resp. at 5.

On January 27, 2009, the ALJ issued her Opinion and Recommended

[1] Respondent also invoked the ''mend the hold doctrine,'' an obscure common law rule which prohibits a party to a contract from changing its position on the contract's meaning during the course of litigation over it. *Id.* at 3 (citing *Utica Mut. Ins. Co.* v. *Vigo Coal Co., Inc.,* 393 F.3d 707, 716 (7th Cir. 2004)). Specifically, Respondent contended that the Government's reliance on the expiration of Respondent's lack of a state controlled substance license was ''analogous to an attempt to mend the hold,'' presumably because the Show Cause Order had cited the consent agreement rather than the expiration. *Id.* at 3 (citation omitted). Respondent did not renew this argument in his exceptions, and in any event, the analogy is misplaced.

Decision. Therein, the ALJ granted the Government's motion for summary disposition and recommended that I revoke Respondent's registration and deny any pending applications. The ALJ rejected Respondent's argument that his due process rights were violated by the Government's reliance on the expiration of his state's dangerous substances license, as Respondent was ''advised * * * of the grounds on which the Government relied in seeking to revoke his registration and * * * addressed those grounds in his response.'' ALJ at 4.

The ALJ also rejected Respondent's argument that the Government had failed to show that his continued registration was inconsistent with the public interest, reasoning that the ''subsections of 21 U.S.C. 824(a) are to be considered in the disjunctive.'' *Id.* Framing the issue as ''whether Respondent is currently authorized to handle controlled substances in Louisiana,'' the ALJ noted Respondent's contention that he had applied for a new state controlled substance registration, but that the State Board of Pharmacy had advised him that it could not act on his application. *Id.* at 5. The ALJ then rejected Respondent's argument, reasoning that Respondent did not dispute that his state registration ''is expired, and although he asserts that there should be a hearing on whether his filing of a renewal application extends his authority to handle controlled substances in Louisiana, he makes no showing that he has applied for and been granted the requisite authority.'' *Id.*

The ALJ thus concluded that there was no dispute over the material fact ''that Respondent is currently not authorized to handle controlled substances in Louisiana, the State in which he is registered with the DEA.'' *Id.* Applying the Agency's settled rule that ''[b]ecause Respondent lacks this state authority * * * he is not currently entitled to a DEA registration in Louisiana,'' the ALJ granted the Government's motion and recommended that Respondent's registration be revoked and that any pending application be denied. *Id.*

Thereafter, on February 13, 2008, Respondent submitted his Exceptions to the ALJ's decision, and on March 9, 2009, the ALJ forwarded the record to me for final agency action. Having considered the entire record including Respondent's exceptions, I adopt the ALJ's finding that Respondent currently lacks authority to handle controlled substances in Louisiana, and therefore, is not entitled to maintain his DEA registration. I also adopt the ALJ's recommendation that Respondent's registration be revoked and that any pending application be denied.

I find that Respondent currently holds DEA Certificate of Registration, BB0492912, which authorizes him to dispense controlled substances in Schedules II through V, as a practitioner, at the registered location of 1632 Marina Drive, Slidell, Louisiana. Respondent's Registration does not expire until July 31, 2009. I further find that Respondent Louisiana Controlled Dangerous Substance (CDS) License expired on September 25, 2008.

I also find that while Respondent has applied for a new State CDS license, he has provided no evidence that Board of Pharmacy has issued one to him. Moreover, Respondent cites to no authority establishing that under Louisiana law, his filing of the application extended his CDS license past its expiration date. *Cf.* 5 U.S.C. § 558(c). I thus adopt the ALJ's conclusion that Respondent does not possess authority to dispense controlled substances under Louisiana law, and therefore does not meet an essential prerequisite for holding a registration under Federal law. ALJ at 5.

Respondent nonetheless excepts to the ALJ's decision on various grounds. First, Respondent contends that the ALJ erred in granting the Government's motion for summary disposition because it relied on an issue (the expiration of his State CDS license) which was not raised in the Show Cause Order. In Respondent's view, a motion for summary disposition in an administrative proceeding should be treated analogously to a motion for summary judgment, and that the ''[p]leadings may not be disregarded in ruling on a motion for summary judgment in Federal court.'' Exc. at 2. According to Respondent, ''if the *pleadings,* depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law,'' then the motion should be granted. Exc. at 2–3 (emphasis in original). By emphasizing, ''pleadings,'' Respondent apparently wished to emphasize his position that the Show Cause Order should have contained all the grounds on which the revocation was ultimately based.

This Agency's proceedings are not, however, governed by the Federal Rules of Civil Procedure. And while those rules (and the judicial decisions interpreting them) may be a useful guide, they are not binding on the Agency. Instead, what is binding on the Agency is the Due Process Clause, the Administrative Procedure Act, and the Agency's regulations.

Contrary to Respondent's understanding, to decide this matter on the grounds asserted in the Government's motion does not violate his right to due process. As the Federal Courts have recognized, '''[p]leadings in administrative proceedings are not judged by the standards applied to an indictment at common law.''' *Citizens State Bank of Marshfield* v. *FDIC,* 751 F.2d 209, 213 (8th Cir. 1984) (quoting *Aloha Airlines, Inc.,* v. *CAB,* 598 F.2d 250, 262 (DC Cir. 1979)). An agency is not required ''to give every [Respondent] a complete bill of particulars as to every allegation that [he] will confront.'' *Boston Carrier, Inc.* v. *ICC,* 746 F.2d 1555, 1560 (DC Cir. 1984); *see also Paul H. Volkman,* 73 FR 30630, 30641 n.35 (2008). Indeed, the Federal Courts routinely uphold agency adjudications which are based on matters which were not initially raised in a charging document but which were nonetheless litigated in a proceeding. *See, e.g., Pergament United Sales, Inc.,* v. *NLRB,* 920 F.2d 130, 137 (2d Cir.1990) (no due process violation where NLRB did not cite in complaint specific provision of NLRA which Board ultimately relied on in its order because the employer ''was not kept in the dark [and] was aware of and actively litigated'' the relevant issue); *Facet Enters., Inc.,* v. *NLRB,* 907 F.2d 963, 972 (10th Cir. 1990) (''A material issue which has been fairly tried by the parties * * * may be decided by the Board regardless of whether it has been specifically pleaded.''); *Citizens State Bank,* 751 F.2d at 213; *Kuhn* v. *CAB,* 183 F.2d 839, 842 (DC Cir. 1950)((''If it is clear that the parties understand exactly what the issues are when the proceedings are had, they cannot thereafter claim surprise or lack of due process because of alleged deficiencies in the language of the particular pleadings.'').

Notably, in the Show Cause Order, the Agency notified Respondent that it was seeking the revocation because he ''do[es] not have authority to prescribe controlled substances in the State of Louisiana,'' and that as a consequence, ''DEA must revoke your DEA registration based upon your lack of authority to handle controlled substances in the State of Louisiana.'' Show Cause Order at 1. The Government thus provided Respondent with notice as to the legal basis for the proceeding.

Moreover, even though the Government relied on the expiration of Respondent's State CDS license rather

than the Consent Order to support its motion, Respondent had an ample and meaningful opportunity to present evidence refuting the Government's evidence and creating a triable issue and/or to make argument (were there any viable ones to be made), regarding the legal effect of his filing of the State renewal application. While Respondent further argues that if the Agency ''was going to place in issue allegations that were not named in the Order to Show Cause, the proper course of action would have been to move to amend the Order to Show Cause,'' he does not identify how he has been prejudiced by the Government's failure to amend the Order. Exc. at 4; *cf. Facet Enterprises,* 907 F.2d at 972 (''In determining whether a respondent can be held liable for an unfair labor practice not charged in the complaint, the central inquiry is fairness: considering the circumstances of the case, did the respondent know what conduct was being alleged and have 'a fair opportunity to present [its] defense?''') (quoting *Soule Glass & Glazing Co.* v. *NLRB,* 652 F.2d 1055, 1074 (1st Cir. 1985)).[2]

The rules governing DEA hearings do not require the formality of amending a show cause order to comply with the evidence. The Government's failure to file an amended Show Cause Order alleging that Respondent's state CDS license had expired does not render the proceeding fundamentally unfair.

Respondent also argues that the ALJ's ruling on the summary disposition motion ''should have been stayed pending disclosure of evidence.'' Exc. at 5. Respondent analogizes the prehearing statements to civil discovery and argues that ''the usual prehearing procedures for exchanging information was [sic] not completed.'' *Id.* There is, however, no general right to discovery under either the APA or DEA regulations, but rather only a limited right to receive in advance of the hearing the documentary evidence and summaries of the testimony which the Government intends to rely upon. *Nicholas A. Sychak, d/b/a Medicap Pharmacy,* 65 FR 75959, 75961 (2000) (citing *McClelland* v. *Andrus,* 606 F.2d 1278, 1285 (DC Cir. 1979)); *see also* 21 CFR 1316.54(e) & 1316.57. Nor, given the narrowness of the issue upon which the motion for summary disposition was based—whether Respondent has authority under state law to dispense a controlled substance—has Respondent shown what material evidence he might have obtained from the Government which he could not have obtained from another source such as the State itself. The contention is therefore without merit.

Respondent also argues that the ALJ unlawfully shifted the burden of proof to him. According to Respondent, ''[t]here is an issue of disputed fact as to whether there has been [a] suspension[,] revocation[,] or denial of [his] state authority to prescribe controlled substances or merely [a] delay in processing his renewal application.'' Exc. at 6. Respondent further claims that the ALJ did not require the DEA to show that the license was ''pending,'' and placed on him the burden of ''show[ing] that he had been granted the requisite authority.'' *Id.* at 7. Relatedly, Respondent maintains that the Government cannot revoke his registration under 21 U.S.C. 824(a)(3) because it has not shown that his registration has been suspended, revoked, or denied by competent authority. *Id.*

Respondent ignores, however, that Congress has made the possession of state authority a prerequisite for obtaining a DEA registration. *See id.* Section 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). In addition, the CSA defines the term ''practitioner'' to ''mean[] a physician * * * or other person licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to dispense [or] administer * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). A physician who no longer holds authority under State law to dispense a controlled substance is therefore not a practitioner within the meaning of the CSA and cannot lawfully dispense.

DEA has therefore consistently held that a practitioner may not maintain his registration if he lacks state authority to dispense controlled substances. This rule has been applied to revoke the registration of a practitioner even when the practitioner's loss of state authority was based on the expiration of a state license rather than a formal disciplinary action of a state board. *See William D. Levitt,* 64 FR 49822, 49823 (1999); *see also id.* at 49822 (collecting cases). As the Agency explained in *Levitt,* because state authorization was clearly intended to be a prerequisite to DEA registration, Congress could not have intended for DEA to maintain a registration if a registrant is no longer authorized by the state in which he practices to handle controlled substances due to the expiration of his state license. Therefore, it is reasonable for DEA to interpret that 21 U.S.C. § 824(a)(3) would allow for the revocation of a DEA * * * Registration where, as here, a registrant's state authorization has expired.

Id. at 49823. *See also Chevron, Inc.,* v. *NRDC, Inc.,* 467 U.S. 837, 843 (1984) (where Congress is silent on a question, courts defer to an agency's reasonable interpretation of the statute it administers).

Accordingly, in relying on the undisputed fact that Respondent's State CDS license had expired, the ALJ did not erroneously shift the burden of proof from the Government to him. Rather, she correctly applied the Agency's settled precedent that because Respondent clearly lacks authority to dispense controlled substances in the State in which he holds his DEA registration and practices medicine, he is not entitled to maintain his registration. Respondent's registration will therefore be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as by 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BB0492912, issued to Roy E. Berkowitz, M.D., be, and it hereby is, revoked. I further order that any pending application of Roy E. Berkowitz, M.D., for renewal or modification of his registration be, and it hereby is, denied. This order is effective immediately.[3]

Dated: July 17, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–17714 Filed 7–23–09; 8:45 am]

BILLING CODE 4410–09–P

[2] Likewise, the Administrative Procedure Act requires only that ''[p]ersons entitled to notice of an agency hearing shall be timely informed of * * * the matters of fact and law asserted.'' 5 U.S.C. 554(b). He was.

[3] Because of the importance of the legal issues raised by Respondent, I conclude that the public interest necessitates that this Order be made effective immediately.

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 20, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable

supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Claims and Payment Activities.

OMB Control Number: 1205–0010.

Agency Form Number: ETA–5159.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 1,272.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Form ETA–5159 report provides important program information on claims taking and benefit payment activities under State/Federal unemployment insurance laws. These data are needed for budget preparation and control, program planning and evaluation, personnel assignment, actuarial and program research, and for accounting to Congress and the public. This collection is authorized under the Social Security Act, Title III, Section 303(a)(6). For additional information, see related notice published at Volume 74 FR 23886 on May 21, 2009.

Darrin A. King,

Departmental Clearance Officer.

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Mentoring, Educational, and Employment Strategies To Improve Academic, Social, and Career Pathway Outcomes

AGENCY: Employment and Training Administration, U.S. Department of Labor.

Announcement Type: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 08–14.

Catalog Federal Assistance Number: 17.261.

SUMMARY: The Employment and Training Administration (ETA) announces the availability of $34 million for grants to serve high schools that have been designated as persistently dangerous by State Educational Agencies for the 2008–2009 school year under section 9532 of the Elementary and Secondary Education Act. The goal of these grants is to reduce violence within these schools through a combination of mentoring, education, employment, case management, and violence prevention strategies. These grants will be awarded to fund projects in schools not currently receiving a DOL grant for these purposes through a competitive process open both to school districts which include persistently dangerous high schools and to community-based organizations (CBOs) in partnership with these school districts. High schools which have been designated as persistently dangerous this school year and which are not currently receiving a Department of Labor (Department or DOL) grant under this initiative are located in the school districts of Baltimore City, Plainfield (New Jersey), New York City, Schenectady (New York), Salem-Keiser (Oregon), Philadelphia, and Puerto Rico. These schools are listed in Section VIIIA below. School districts and CBOs must submit a separate application for each high school that they propose serving, but may submit as many applications as they have eligible schools. Applications submitted by school districts must include plans to have one or more CBOs as sub-grantees/contractors to operate at a minimum the mentoring component. These proposed CBO sub-grantees/contractors do not need to be listed in the application, as the Department strongly encourages the use of competition in selecting sub-grantees and contractors either before or after grant award. Applications submitted by CBOs must have a school district identified as a partner, with a signed memorandum of understanding (MOU) with the school district included in the application. To be eligible to apply for these grants as a CBO, organizations must be not-for-profit entities and can operate either nationally or locally.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantees.

DATES: *Key Dates:* The closing date for receipt of applications under this announcement is September 22, 2009. Application and submission information is explained in detail in Part IV of this SGA.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Reference SGA/DFA PY 08–14, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the submission requirements set forth in this notice will be granted. For detailed guidance, please refer to Section IV.C.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

Part I provides a description of this funding opportunity
Part II describes the size and nature of the anticipated awards
Part III describes eligibility information and other grant specifications
Part IV provides information on the application and submission process
Part V describes the criteria against which applications will be reviewed and explains the proposal review process

Part VI provides award administration information
Part VII contains DOL agency contact information
Part VIII lists additional resources of interest to applicants and other information

I. Funding Opportunity Description

The ETA announces the availability of $34 million for grants to serve high schools that are not currently receiving a DOL grant for these purposes and that have been designated as persistently dangerous by State Educational Agencies for the 2008–2009 school year under section 9532 of the Elementary and Secondary Education Act. The goal of these grants is to reduce violence within these schools through a combination of mentoring, education, employment, case management, and violence prevention strategies.

The high schools that have identified this year as persistently dangerous have the following characteristics:

■ These high schools are quite large—many of them have enrollments of over 1,500.

■ In particular, these high schools tend to have disproportionate numbers of 9th graders. Many of these persistently dangerous schools have close to half of their students in the ninth grade. In contrast, high schools across the country typically have a much more equal number of students in the 9th, 10th, 11th, and 12th grade classes.

■ The high schools lose great numbers of students between the 9th and 12th grades. Almost all of the schools lose over half of their 9th graders before they reach the 12th grade, and many lose over 60 percent of their 9th graders before they reach the 12th grade.

■ The high schools tend to have significant numbers of students with severe truancy problems, typically with slightly over 20 percent of students missing 50 or more days of school each year.

■ These schools serve a predominantly poor population, with many of the schools having 70 percent or more of their students eligible for a free or reduced lunch.

■ Several of the schools are located in census tracts with a poverty rate of 20 percent or more.

■ The persistently dangerous special education schools that are ungraded but that serve primarily students ages 14 and above also have between 52 percent and 68 percent of their students eligible for a free lunch.

These statistics suggest that the problems of violence, crime, low educational achievement, poverty, and joblessness that characterize persistently dangerous schools and the neighborhoods they serve are all interrelated. These various problems can be overwhelming to both individual students and schools, making it very difficult to create a school climate that is safe and in which academic success is the norm. Research by the Center for Social Organization of Schools at Johns Hopkins University suggests that a fundamental problem of troubled high schools is that they have large numbers of incoming ninth graders not prepared academically for high school.[1] A study by the Consortium on Chicago School Research indicates that ninth graders who fail courses are a diverse group, with some who fail almost all of their courses and need sustained interventions, while others fail only one or two courses and could be helped by the school moving towards Ninth Grade Academies.[2] Finally, the *Turnaround Challenge* report by Mass Insight notes that schools in poor communities need to ''proactively address the challenges accompanying their students as they walk in the school house door: from something as basic as finding an impoverished child socks or a coat, to assisting where possible with transportation or health services, and attacking the significant cognitive, social, cultural, and psychological barriers to learning that many children of poverty tend to experience.'' [3]

The Department's intent is to provide sufficient funding through these grants to allow schools to reconfigure in ways that both significantly expand the level of services provided to students and enhance coordination of these services within the school and with the community. Consistent with the research described above, the Department expects that each grant will include three levels of interventions: (1) Reforms that affect the whole school; (2) interventions aimed at particular target groups of at-risk youth, such as entering ninth graders and repeating ninth graders; and (3) intensive interventions for individual youth who present the greatest challenges relating to misconduct, truancy, and poor school performance. All three levels of interventions should be aimed at improving student attendance, behavior, effort, and course performance. Because persistently dangerous schools tend to have so many ninth graders, the Department sees that an emphasis of these grants will be improving services to entering and repeating ninth graders.

The required components for each grant are listed below. In discussing the components we provide various examples of program models, but applicants are free to include in their proposed design program models other than those provided here. The Department expects that in designing these components, grantees will select program models that have evidence of demonstrated effectiveness and that the selected program elements are consistent with the school's overall improvement plan.

To design and carry out these components, each grant must be led by a Turnaround Team that includes the school principal, the principal's immediate supervisor in the school district, and the CBO sub-grantees. The Turnaround Team can also include outside educational and youth development experts and representatives of other partners such as the juvenile justice system, police and school security, foundations, parents, the private sector, and the local Workforce Investment Board. The Turnaround Team is responsible for guiding both the planning and the implementation of the initiative and is to continue this role throughout the term of the grant.

The Department also expects that in carrying out the various components listed below, grantees will foster connections with neighborhood leaders and institutions which serve youth as part of their missions, such as churches with youth programs, Settlement Houses, Boys and Girls Clubs, Girls Inc, YMCAs, and YWCAs. Representatives from such institutions serving the same neighborhood as the school should be included in the Turnaround Team. Ideally, churches and social service organizations in the neighborhoods served by the school could join together to form a community-wide net to serve at-risk youth and to prevent youth violence, as was done in Boston's 10 Point Coalition. See the description of this effort at *http://www.jsonline.com/story/index.aspx?id=212652).*

1. *Mentoring.* Each grant must include an adult volunteer mentoring component that integrates the other violence prevention, education, employment, and case management components provided through the grant. The Department requires that a CBO

[1] Robert Balfanz and Nettie Legters, ''The Graduation Rate Crisis We Know and What Can Be Done About It'', *Education Week,* July 12, 2006, available at *http://web.jhu.edu/CSOS/graduation-gap/edweek/Crisis_Commentary.pdf.*

[2] Melissa Roderick, *Closing the Aspirations-Attainment Gap: Implications for High School Reform,* MDRC, April 2006, available at *http://www.mdrc.org/publications/427/full.pdf.*

[3] *The Turnaround Challenge,* Mass Insight Educational Research Institute, 2007, available at *http://www.massinsight.org/resourcefiles/TheTurnaroundChallenge_2007.pdf.*

experienced in providing social services in schools with large numbers of high-risk students or in operating mentoring programs will have the lead in this component of the program. This does not need to be the same CBO that is operating the case management component described below. Mentoring can be provided through volunteers recruited in a variety of ways, and may include one-on-one mentoring, group mentoring, and service-based mentoring. The Department does not expect that every student in the school will have a volunteer mentor, but that a sufficient proportion of students have a mentor to make a difference in the school environment. Points to consider in designing this portion of the project include:

■ Proposed mentoring projects should seek to address each of three types of mentoring strategies: personal development mentoring educates and supports youth during times of personal or social stress and provides guidance for decision making; educational or academic mentoring helps a student improve their overall academic achievement; and career mentoring helps the youth develop the necessary skills to enter or continue on a career path.

■ The proposed mentoring strategies should include a period of mentoring and follow-up that is no less than 18 months in duration.

■ While starting a volunteer mentoring component may sound easy, it is actually quite difficult to implement. Volunteers need to be recruited, screened, cleared through background checks, trained, correctly matched with youth, and provided ongoing guidance.

■ Conducting thorough background checks will be necessary before assigning a mentor to a youth. Established mentoring organizations such as the Big Brothers/Big Sisters Program and the National Mentoring Partnership may be helpful in sharing the procedures and data sets that are currently available for conducting background checks. Contact information for local Big Brother/Big Sister Programs can be obtained at *http://www.bbbs.org.*

■ Information on starting mentorship programs is available at the MENTOR/National Mentoring Partnership Web site at *http://www.mentoring.org/,* including their guide *Elements of Effective Practice* at *http://www.mentoring.org/downloads/mentoring_411.pdf* and their tool kit *How to Build a Successful Mentoring Program Using the Elements of Effective Practice* at *http://www.mentoring.org/downloads/mentoring_413.pdf.*

■ Characteristics of effective mentoring programs identified by experts in this field include taking the time to correctly match adults and youth based on common interests; training mentors about what to expect in the mentoring relationship; involving parents in the mentoring program; and providing ongoing technical support to mentors.

■ Faith and community-based organizations may be a good source for recruiting volunteer mentors for youth. For example, the Safer Foundation in Chicago has developed over the years partnerships with faith-based organizations to provide mentors for returning prisoners. See their Web site at *http://www.saferfoundation.org/viewpage.asp?id=349.*

■ Service-centered mentoring allows adults and youth to get to know each other while working together on community service projects. These can be both small individual projects and large group projects. For larger service-centered mentoring projects, local AmeriCorps and City Year programs may be able to set up such projects with AmeriCorps and City Year volunteers serving as mentors for students.

■ Local corporations may also be a source for recruiting mentors for students. Programs can be set up in which corporation employees spend part of their work day at the school.

■ Information on mentoring youth with disabilities can be found at the Partners for Youth with Disabilities Web site at *http://www.pyd.org/national-center/council-goals.htm.*

■ Applicants may also be able to learn lessons from the Amachi mentoring program, which has been developed by Public/Private Ventures to provide mentors for the children of prisoners. The program's infrastructure and expertise are provided by Big Brothers/Big Sisters of America, which oversees the screening, matching, and training of mentors, and provides mechanisms for monitoring and supporting the mentors. For more information on this program, *see http://www.ppv.org/ppv/publications/assets/167_publication.pdf.*

2. *Education Strategies.* This component can include school restructuring efforts and alternative learning strategies aimed at getting at the underlying causes of violence, high dropout rates, and low student achievement in the schools. School districts can choose from the options below or propose other strategies that are well thought-out and for which reasonable evidence exists to support their inclusion. There will be sufficient funds in each grant to allow implementing several educational strategies similar to those presented here:

■ *Breaking large schools into houses or career academies.* Especially if used for upper level grades in conjunction with the Ninth Grade Academy and Twilight School options discussed below, breaking a large school into career academies can greatly decrease the chances that a student gets lost in the crowd. Given the positive research results for career academies, the Department strongly recommends this as one of the strategies to be implemented.

■ *Ninth Grade Academies.* Such an academy separates ninth graders into a section of their own in the school building, with their own assistant principal, teachers, and counselors.

■ *Twilight Schools.* Twilight Schools operate as a school-within-a-school in the building with a schedule that runs from early afternoon to early evening. The different hours better fit the needs of some youth and allow the schools to have an identity of their own somewhat separate from the larger high school. Students feel part of both the Twilight School and the larger school. The Department sees Twilight Schools started under these grants as being targeted during the first year on repeating ninth graders who earned few if any credits the previous year. Research indicates that failing the ninth grade strongly predicts dropping out of school and that repeating ninth graders need intensive interventions or they will simply fail the ninth grade again.[4] Twilight Schools started under these grants could then be expanded in subsequent years to include both a new set of repeating ninth graders and students who choose to stay in the Twilight School rather than moving back to the regular school. Like Ninth Grade Academies, Twilight Schools started under this grant would have their own section of the building, and their own assistant principal, teachers, and counselors.

■ *Credit Retrieval.* A reason that many youth drop out of school is that they become hopelessly behind in credits. Credit retrieval or recovery classes allow students to make up courses that they failed using educational software and other means under the direction of a teacher instead

[4] See Melissa Roderick, *Closing the Aspirations-Attainment Gap: Implications for High School Reform,* MDRC, April 2006, available at *http://www.mdrc.org/publications/427/full.pdf,* and Ruth Curran Neild and Robert Balfanz, *Unfulfilled Promise: The Dimensions and Characteristics of Philadelphia's Dropout Crisis, 2000–2005,* available at *http://www.projectuturn.net/reports.html.*

of repeating entire semesters of work. Credit retrieval can be useful to a range of students—helping older youth who are far behind in credits, keeping younger youth from falling too far behind their age cohort in credits, and helping older students who need only a few more credits to graduate.

■ *Block Scheduling.* Block scheduling allows students to take four courses for 75 minutes a day each semester instead of seven courses for 50 minutes each. This allows students to focus more on a smaller set of courses, and for teachers to work with a much smaller set of students each semester. Block scheduling gives teachers a chance to work collaboratively in serving each student, and provides additional time for joint planning by teachers.

■ *Double and Triple Doses of Reading and Math.* Key predictors of a student dropping out of school are failing ninth grade English or Algebra and having high truancy in the ninth grade. Providing entering and repeating ninth graders with double or triple doses of reading and math during the day can address these causes of youth eventually dropping out of school.

■ *Reduced Class Sizes in Algebra and Selected Other Courses.* Reducing class sizes across the high school from say 27 to 22 may have a minimal impact on student performance, but strategically reducing class sizes in difficult subjects such as Algebra from 27 students to 10 could result in a significant increase in performance.

■ *Summer Transition Programs for Entering Ninth Graders.* These programs would include identifying and contacting in the spring the eighth graders who will be attending the high school in the fall, and then providing them with a summer transition program or summer camp to prepare them for high school. These summer programs could focus on anti-violent behavior, peer mediation, study skills, and reading and math remediation.

■ *Outreach and Remediation for Eighth-Graders in Feeder Middle Schools.* Outreach and remediation efforts may be conducted during the spring term for eighth-graders planning to attend the high school in the fall. Up to $300,000 of the grants to larger schools with 1,000 or more students and up to $200,000 of the grants to smaller schools can be used for such programs in feeder middle schools. The hope is that such outreach efforts can lead to a higher percentage of entering ninth graders attending the Summer Transition Program.

■ *Vouchers for outside tutoring and supportive services.* Such vouchers would allow parents and students to choose among various local organizations to receive tutoring and supportive services aimed at helping the student succeed in school. Grantees will need to demonstrate that any supportive services provided under these grants are coordinated with the supplemental educational services the district and school must offer to students as part of the No Child Left Behind requirements.

The Department expects that these various educational interventions will be accompanied by extensive staff development efforts, which will include professional development time devoted to the teacher's academic content area, training on instructional methods, training for teachers collaborating across subject areas, and having teams of expert teachers work on an ongoing basis observing newer teachers and providing them guidance for improvement.

Many of the educational interventions described here combined make up the *Talent Development High School* Model designed by the Center for Social Organization of Schools at Johns Hopkins University, and applicants may select to replicate this entire model. It is described in more detail at the Center's Web site at *http://web.jhu.edu/CSOS/tdhs/index.html.* The educational interventions described here are also consistent with the principles developed by Theodore Sizer in the *Coalition for Essential Schools* model, and applicants may select replicating that model. It is described in more detail at the Coalition for Essential School Web site at *http://www.essentialschools.org/.* The educational interventions described here are also consistent with the middle school reforms recommended by the Carnegie Corporation in their *Turning Points* report, *http://www.carnegie.org/sub/research/index.html#adol.* Applicants may also wish to consider in designing their projects the work of the Consortium on Chicago Public School Research and the Turnaround Challenge report by Mass Insight referenced earlier in this grant announcement.

3. *Employment Strategies.* The employment component should emphasize internships for juniors and seniors in high-growth occupations and industries. These internships can occur during afternoons on school days or during the summer. Points to consider in designing this component include:

■ To the extent that the school is broken down into career-focused academies, this employment component should be tied to the themes of these academies. See MDRC's research on Career Academies at *http://www.mdrc.org/project_29_1.html.*

■ These internships should be carefully designed so that students are doing useful work to earn their wages as opposed to job shadowing or sitting idly at their desks.

■ Developing these internships will require linkages to major corporations in the city, including possibly corporations willing to adopt the school both to provide internships to the students and to have their employees serve as mentors to the students.

■ Implementing this component will require developing a partnership with the local workforce system to provide access both to the corporations represented on the Workforce Investment Board (WIB) and the service providers funded by the local workforce system.

■ The employment component can include efforts to expose students to careers and to coordinate with industry-based youth organizations. See the Web sites of Skills USA (*http://www.skillsusa.org/*) and Health Occupations Students of America (*http://www.hosa.org/natorg.html*).

■ The employment component should include efforts to expand the career awareness of students and to make them aware of the educational requirements of various careers.

■ Some grant funds may be used for wages for these after-school and summer internships. Summer internship efforts should be coordinated where appropriate with summer jobs programs operated by the local WIB.

■ In designing the employment component, grantees will need to do a scan of existing DOL-funded initiatives in the community, including the Workforce Investment Act (WIA) formula youth program, community-based job training projects, youth offender projects, and high-growth job training grants, to determine potential linkages.

4. *Efforts to Improve the School Environment and Student Behavior.* This component can include conflict resolution classes, anti-bullying efforts, student courts, peer mediation, anger management classes, crisis intervention strategies, increased involvement of parents, and training teachers in effective classroom management. This component should include both school-wide activities and efforts targeted towards the students who are causing the most discipline problems at the school. Resources for developing this component of the program include:

■ *Safeguarding Our Children: An Action Guide* was produced by the Center for Effective Collaboration and

Practice of the American Institutes for Research and the National Association of School Psychologists under a cooperative agreement with the U.S. Department of Education. This guide presents a comprehensive plan for preventing school violence. It is available at *http://cecp.air.org/guide/aifr5_01.pdf.*

■ The *Resolving Conflict Creatively Program* is a nationally recognized violence prevention program developed by Educators for Social Responsibility (ESR), a non-profit organization that offers comprehensive programming, staff development, and consultation to schools. ESR has also developed a *Partners in Learning Program* specifically for high schools that covers failing students, classroom discipline, school-wide discipline, positive peer culture, peer mediation, and countering bullying. More information is available at *http://www.esrnational.org/index.php?location=high_school&l=hs.*

5. *Case Management.* This component will provide a team of full-time advocates for youth stationed at the school serving as case managers. The Department sees these case managers or advocates as assisting school counselors in addressing the behavioral, truancy, and academic problems of youth, and in linking students to available social services. The Department also sees these case managers or advocates getting to know the parents of youth and making home visits to the youth. The Department expects that a CBO experienced in providing social services in schools with large numbers of at-risk youth will have the lead in operating this component of the program. This can be the same CBO that will be operating the mentoring component or it can be a different CBO. Consistent with the mentoring component, the Department does not expect that every student in the school will be assigned to a case manager or advocate, but that a sufficient proportion of students will be served through this component to make a difference in the school climate.

There are many models of in-school case management programs, which grantees can use or build upon in developing their own program. Such models include:

■ The Communities in Schools model emphasizes bringing to schools the social service and health resources available from the community. Site coordinators within schools identify the social service needs of individual students and find the appropriate community resources to address those needs, whether it be eyeglasses, tutoring, food, or a safe place to be. *See http://www.cisnet.org/.*

■ The Quantum Opportunity Program (QOP), developed by OIC of America, focuses on advocates staying with the same small group of entering ninth graders throughout the students' four or sometimes five years of high school. Each QOP advocate is assigned to roughly 20 entering ninth graders. QOP also includes academic remediation, life skills, and community service components. The QOP model has been evaluated through a random assignment study. The program did not produce impacts overall across the seven sites studied, but did have positive impacts in selected sites and with youth who were under age 14 at enrollment. *See http://www.mathematica-mpr.com/publications/pdfs/QOPfinalimpacts.pdf.*

■ The Jobs for America's Graduates' Multi-Year Dropout Prevention Program has career specialists within schools working with groups of 35 to 45 students to keep the youth on track to graduation. The program starts working with youth in the ninth grade and continues through graduation and one-year of follow-up after graduation. *See http://www.jag.org/model.htm.*

■ The Violence-Free Zone model developed by the Center for Neighborhood Enterprise uses mature young adults who are from the same neighborhoods as the students in the schools that they serve. The Youth Advisors serve as hall monitors, mentors, counselors, and role models for youth. *See http://www.cneonline.org/pages/Violence-Free_Zone.*

■ The Futures Program in Baltimore operated by the Mayor's Office of Employment Development provides advocates in schools to offer tutoring, incentives, cultural enrichment, and work experience to youth. *See http://www.oedworks.com/youthserv/index.htm.*

■ The Partnership for Results program in the Auburn, New York school district uses counselors to conduct home visits and provide links to various social services to families of students with severe behavioral and truancy problems. *See http://www.partnershipforresults.org/.*

■ The College Bound Foundation model emphasizes assisting students to go on to college. The Foundation places College Access Program Specialists in Baltimore City's public high schools to help students and their parents learn about opportunities to attend college, and to make sure students take academic courses to prepare for college, take the PSAT and SAT tests on time, apply for college admission on time, and apply for available student aid. *See http://www.collegeboundfoundation.org/.*

II. Award Information

A. Award Amount

Grants to serve high schools with enrollments of 1,000 students or more will amount to $6.8 million. Grants to serve high schools with enrollments of less than 1,000 students, including ungraded special education schools that primarily serve students ages 14 and above, will amount to $3.4 million. Applicants should request in their proposals the entire $6.8 million for the larger high schools and the entire $3.4 million for the smaller schools so as to take full advantage of the resources available for turning around each school. Each grant may receive additional years of funding depending on the availability of such funds and satisfactory performance.

B. Period of Performance

Grants will be awarded for a 36-month period of performance, which may be extended with grant officer approval. This period of performance includes a planning period of up to 12 months leading up to the start of the school year in September 2010, and an operations period of two calendar years. Applicants should budget for two full school years of direct service delivery for each major component. All program components need to be started by the beginning of the 2010 school year. Grantees must provide separate budgets for planning and operations. Grantees should be judicious in their use of planning funds and careful to use them specifically for planning components associated with this grant.

III. Eligibility Information and Other Grant Specifications

A. Eligible Applicants

Either school districts or CBOs can apply for these grants. Schools that are currently receiving DOL funds for this project are not eligible to receive additional funds under this solicitation. Applications can only be submitted for projects to serve high schools that have been identified by the State Department of Education for the 2008–2009 school year as persistently dangerous under section 9532 of the Elementary and Secondary Education Act. This includes ungraded special education schools that primarily serve students ages 14 and above. High schools that have been identified as persistently dangerous this year and that are not currently receiving grants from the Department of Labor under this initiative are located in the school districts of Baltimore City,

Plainfield (New Jersey), New York City, Schenectady (New York), Salem-Keiser (Oregon), Philadelphia, and Puerto Rico. These high schools and their most recently available enrollment level are listed in Section VIIIA below. Schools that are currently receiving funds from DOL through a grant awarded under this persistently dangerous schools initiative in June of 2008 are not eligible to apply under this new competition. Schools that had been identified as persistently dangerous this school year, but that have had this designation removed because of successful appeals are not eligible for award. School districts may apply for persistently dangerous schools that are the subject of ongoing appeals regarding their persistently dangerous status, but the application should note that such an appeal is in process and the appeal process will need to be resolved prior to award.

School districts applying will need to have one or more CBOs as sub-grantees/contractors to operate at a minimum the mentoring component. These proposed CBO sub-grantees/contractors do not need to be listed in the application, as the Department strongly encourages the use of competition in selecting sub-grantees and contractors either before or after grant award. CBOs applying will need to have the school district as a partner, with an MOU signed by the school district included in the application. To be eligible to apply for these grants as a CBO, organizations must be not-for-profit entities and can operate either nationally or locally. Separate applications must be submitted for each high school to be served, but school districts and CBOs may submit as many applications as they have eligible schools.

Since the Department intends that activities started with these grants will be sustained over time, school districts and CBOs must include in each application a statement by the school district that there are no plans currently in place to close the school that is the focus of the proposal.

B. Cost Sharing or Matching

There are no cost-sharing or matching requirements for these grants.

C. Other Grant Specifications

1. All students enrolled in the target high school are eligible for services under this grant, including youth who are no longer attending but still listed as enrolled.

2. *Veterans Priority.* The Jobs for Veterans Act (Pub. L. 107–288) which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. In circumstances where a grant recipient must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that grant recipients give the veteran priority of service by admitting him or her into the program. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the Job for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at ''Jobs for Veterans Priority of Services'' Web site: *http://www.doleta.gov/programs/vets.*

IV. Application and Submission Information

A. Address To Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal will consist of two separate and distinct parts—a cost proposal and a technical proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part I. Cost Proposal. The Cost Proposal must include the following three items:

(a) The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/sga/forms.cfm*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the representative of the applicant.

(b) All applicants for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. *See* Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

(c) The SF 424A Budget Information Form (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/sga/forms.cfm*). In preparing the Budget Information Form, the applicant must provide a detailed backup budget for both the planning and operations aspects of the project, with a narrative explanation in support of the request. The budget narrative should break down the budget and leveraged resources by project activity, should discuss cost-per-participant, and should discuss precisely how the administrative costs support the project goals. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form.

Please note that applicants who fail to provide a SF 424, SF 424A, and/or a budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other Federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative and in Part II of the proposal. The amount of Federal funding requested for the entire period of performance should be shown on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Part II. Technical Proposal. The Technical Proposal will demonstrate the applicant's capability to plan and implement a project in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Part V Section A of this SGA. The Technical Proposal is limited to twenty (20) double-spaced single-sided pages with 12 point text font and one-inch margins. Any pages submitted in excess of this 20 page limit will not be reviewed. In addition, the applicant must provide a letter from the school superintendent committing to not displace State and local funds going to the high school with these grant funds and stating that there are no plans currently in place to close the high school. Also, CBOs applying for these grants must include

evidence of not-for-profit status. These additional materials do not count against the 20-page limit for the Technical Proposal.

Applicants submitting proposals in hard-copy must submit an original signed application (including the SF–424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM.

C. Submission Date, Time, and Address

The closing date for receipt of applications under this announcement is September 22, 2009. Applications must be received at the address below, or electronically received at the Web site below, no later than 5 p.m. (Eastern Daylight Saving Time). Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted.

Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Reference SGA/DFA PY 08–14, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time.

Applicants may apply online through Grants.gov (*http://www.grants.gov*). Any application received after the deadline will not be accepted. It is strongly recommended that applicants applying online for the first time via Grants.gov immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic application submission in order to avoid unexpected delays that could result in rejection of an application. If submitted electronically through Grants.gov, the application must be submitted as a .doc, .xls, or .pdf file.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application required to be received by the 20th of the month must be postmarked by the 15th of that month) or (b) was sent by professional overnight delivery service or submitted on Grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. An application submitted through Grants.gov will not be considered ''received'' by the Department of Labor unless it was: Electronically submitted on Grants.gov prior to the deadline;'' validated by Grants.gov; and forwarded by Grants.gov to the Department of Labor. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. Applicants take a significant risk by waiting to the last day to submit by Grants.gov. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

ETA will host a Virtual Prospective Applicant Conference for this grant competition. Registration information for the Prospective Applicant Conference will be posted on ETA's Web site at *http://www.doleta.gov* and *http://www.workforce3one.org.* Please check these pages for updates periodically during the Solicitation.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

E. Funding Restrictions

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs. Funds provided under these grants shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds. In accepting funds under this grant as either the grant recipient or sub-recipient, the school district agrees not to divert funds received through this grant to other purposes by reducing the annual budget the school would have received in the absence of the grant. The Department prohibits paying for security officers, police officers, and clinical psychologists with funds provided under this grant. Paying for food is only allowable in circumstances in which it is integral to a training activity. Grant funds may be used to pay wages to students for after-school and summer internships as long as students are assigned real work at these internships, but grant funds cannot be used for paying stipends to youth. Grantees must submit an implementation plan and detailed budget for Federal Project Officer review and approval prior to starting operations. If grantees are starting some components sooner than others, they can submit separate plans for the components as they are ready to start them.

Indirect Costs. As specified in OMB Circulars on Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after the grant award. The Federal Cognizant Agency is generally determined based on the preponderance of Federal dollars received by the recipient.

Administrative Costs. An entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect

costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its Federal Cognizant Agency as specified above.

F. Salary and Bonus Limitations

In compliance with Public Law 109–234 and Public Law 110–5, none of the funds appropriated in Public Law 109–149, Public Law 110–5,or prior Acts under the heading ''Employment and Training'' that are available for expenditure on or after June 15,2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, excepts as Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A–133. See Training and Employment Guidance Letter Number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.*

G. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

Direct Federal grants, sub-award funds, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the Workforce Investment Act of 1998 and DOL regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. *See* 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.'' Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at *See* 29 CFR Part 2, Subpart D. Provisions relating to the use of indirect support (such as vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266.

A faith-based organization receiving Federal funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of DOL funded activities.

Faith and community-based organizations may also reference ETA Training and Employment Guidance Letter (TEGL) No. 01–05 (July 6, 2005), available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2088.* Faith-based and community organizations may learn about equal treatment and religion-related regulations through the DOL's new online training course at Workforce3one (*http://www.workforce3one.org*). The course can be found by typing the key works—equal treatment—in the search box on the upper right hand corner of the page. If you are previously registered on this site, you can find the course directly at *http://www.workforce3one.org/public/shared/detail.cfm?id=5566&simple=false.*

ETA Intellectual Property Rights. The Federal Government reserves a paid-up, non exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal purposes: (i) The copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, theses revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

Additional Requirements. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

H. Withdrawal of Application

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate proposals submitted. These criteria and point values are:

Criterion	Points
1. Statement of Need	15
2. Analysis of the problems faced by the school and its students	20
3. Project design	45
4. The commitment of the applicant and the community to the project and the quality of proposed staff	20
Total Possible Points	100

The rated components listed above make up the Technical Proposal (along with the additional requirements listed in section IV. B).

1. Statement of Need (15 Points)

• Provide the number of students in the school's ninth grade class (both entering ninth graders and repeating ninth graders) in the fall of 2004 and the number of students who graduated from the school in the spring of 2008. If the school includes only grades 10 through 12, provide the number of 10th graders in the fall of 2005 and the number of students who graduated from the school in the spring of 2008.

• Discuss the number and severity of behavioral incidents in the school during the past two school years.

• Discuss the extent of juvenile crime and youth gangs in the community served by the school. If the school draws students from the entire city, describe the extent of juvenile crime and youth gangs in the communities from which most students are drawn. Where possible, provide data on the level of juvenile crime and youth gang involvement in the community or communities served.

• Ungraded schools serving students with special needs should discuss the behavioral issues and academic challenges faced by their students instead of the three discussion points above.

Proposals will be evaluated under this criterion based on:

• The percentage of students lost between the ninth grade class in the fall of 2004 and the graduating class in the spring of 2008, or for schools that include only grades 10 through 12, the percentage of students lost between the tenth grade class in the fall 2005 and the graduating class in the spring of 2008 (5 points).

• The number and severity of behavioral incidents per student in the school during the past two school years (5 points).

• The extent of the juvenile crime and youth gang problem in the community served by the school (5 points).

• Ungraded schools serving students with special needs will be evaluated based on the severity of the behavioral problems and academic challenges of the students that they serve, with a maximum total of 15 points for their answer.

2. Analysis of the Problems Faced by the School and Its Students (20 Points)

If a school district is applying, this section should be prepared jointly by the school district and the principal and staff of the high school. If a CBO is applying, it should be prepared jointly by the school district, principal and staff of the high school, and the CBO. The section should present a discussion of the problems and challenges faced by the school and its students, and a discussion of why students drop out without graduating and why students become involved in behavioral incidents at the school or in juvenile crime or youth gangs outside the school. This section should also provide evidence that the principal and staff of the school were involved in these discussions.

Proposals will be evaluated under this criterion based on:

• The clarity of the discussion of the problems and challenges faced by the school and its students (10 points).

• Evidence that the school principal and staff were active participants in these discussions. Such evidence could include, for example, dates of meetings held (10 points).

3. Project Design (45 Points)

We are asking you to describe your project design in two ways in this section: (1) In a summary form in the matrix below, and (2) in a more detailed way in a narrative. Begin this section by filling out the matrix below by inserting the new activities to be funded under this grant that will be directed towards: (1) The whole school; (2) particular target groups of at-risk youth, such as entering ninth graders and repeating ninth graders; and (3) individual youth who present the greatest challenges relating to misconduct, truancy, and poor school performance. Use the matrix to show how new activities will be introduced at all three of these levels to improve student attendance, behavior, effort, and course performance.

Here are some examples. (1) If mentors will be provided to particular target groups of students and to individual students with the greatest challenges, and if the mentors will attempt to improve student attendance, behavior, motivation, and course performance, then mentoring should be listed in all of the blocks relating to target groups and individual youth. (2) If tutoring and credit retrieval will be made available to all students, then both of these activities should be listed in the block for initiatives affecting the whole school to improve student course performance. (3) If conflict resolution skills will be taught to all students in the school, then it should be listed as an initiative affecting the whole school aimed at improving student behavior. (4) If new counselors are to be hired to conduct home visits to chronically truant students, it should be listed as an initiative aimed at students with greatest challenges to improve attendance. (5) If a Twilight School will be started for repeating ninth graders to improve their attendance, behavior, motivation, and course performance, it should be listed as an activity in all four blocks for targeted at-risk groups. There can be one, two, three, or more activities listed in each block.

	Improving student attendance	Improving student behavior and reducing violence	Improving student effort and motivation	Improving student course performance
Initiatives Affecting Whole School.				
Initiatives Targeted at Specific At-Risk Groups (for example, all 9th graders, repeating 9th graders, juvenile offenders, and teen parents).				
Intensive Interventions for Individual Students with Greatest Challenges.				

In addition to completing the matrix, provide a narrative that describes your strategies in detail that includes the following:

■ More complete information on each of the strategies identified in the matrix, including roles and responsibilities for identified project partners and how collectively these strategies complement the existing school improvement plan.

■ Implementation plans to meet the required project components in Part I of the grant announcement:

1. *Turnaround Team:* Discuss who will serve on this team, including community-based and faith-based organizations and groups. Discuss the roles and responsibilities of the Turnaround Team.

2. *Mentoring:* Describe how the mentoring component will be carried out, including how mentors will be recruited, screened, and trained, the anticipated number of students who will receive mentors, and the number of full-time staff to be hired for this component.

3. *Education Strategies:* Discuss the educational strategies that you will implement with grant funds. Provide details regarding how you will implement each strategy, including the number of full-time staff positions that will be dedicated to each new strategy and the expected number of students to be served each year by each strategy. Describe the level of staff development that will be provided in implementing these educational strategies. If vouchers for after-school tutoring or supportive services are proposed, describe how the vouchers will be implemented in a way consistent with Federal Equal Treatment rules on indirect support of religious organizations.

4. *Employment Strategies:* Discuss plans for developing internships for juniors and seniors during the school year or during the summer. Discuss ideas for possible places for these internships, and the number of students expected to be involved in the internships. Describe potential linkages with other DOL-funded formula and discretionary youth employment programs that currently exist in the neighborhood served by the school, and possible links with the local WIB and local One-Stop Centers.

5. *Improving the School Environment and Student Behavior:* Discuss how you will provide students with conflict resolution and anger management skills, how you will in other ways promote violence reduction in the school, and the anticipated number of students to be served by this component.

6. *Case Management:* Discuss plans for carrying out this component, including the number of case managers or advocates you expect to hire, how these case managers or advocates will interact with guidance counselors and staff, the expected number of students to be served each year in this component, and the anticipated case load size.

■ Projected outcomes to be achieved. Indicate for each component the expected outcomes to be attained. For example, the expected outcomes of the mentoring component may be reducing truancy by 5 percent, reducing behavioral incidents by 10 percent, and increasing the percentage of ninth graders promoted to the 10th grade by 10 percent.

Proposals will be evaluated under this criterion based on:

■ The design for school-wide activities, including its potential for having a measurable impact on the school, the extent to which the applicant demonstrates that it has thought through how it will implement the various school-wide activities, and the extent to which it has considered possible links with other DOL grants and other neighborhood programs (15 points).

■ The design for initiatives aimed at specific target groups, including its potential for having a measurable impact on the school and the extent to which the applicant demonstrates that it has thought through how it will implement the various target group activities (15 points).

■ The design for initiatives aimed at students with the greatest challenges, including its potential for having a measurable impact on the school and the extent to which the applicant demonstrates that it has thought through how it will implement the various activities aimed at students with the greatest challenges (15 points).

4. The Commitment of the Applicant and the Community to the Project and the Quality of Proposed Staff (20 Points)

If the school district is applying, this section should include:

■ A clear statement indicating the school district's commitment to this project, including a commitment to making a good faith effort to sustain initiatives after Federal funds cease using average daily attendance funds and other resources. This statement should be backed up by a letter of support from the school superintendent. This letter should acknowledge that ''in accepting funds under this grant as either the grant recipient or sub-recipient, the school district agrees not to divert funds received through this grant to other purposes by reducing the annual budget the school would have received in the absence of the grant'' and that no plans are currently in place to close the school.

■ A description of the experience of key school district staff that will be involved in the project.

■ A description of the requirements that will go into the grant announcement for selecting CBO sub-grantees/contractors. The Department strongly encourages the competitive selection of sub-grantees and contractors either before or after grant award.

■ A discussion of the community's potential commitment to the project, including a description of organizations that serve the same neighborhoods as the school that could be potential partners, including churches with youth programs, Settlement Houses, Boys and Girls Clubs, Girls Inc, YMCAs, and YWCAs, and how these organizations could help serve as a community-wide net for at-risk youth.

■ A discussion of other partners that the school district hopes to develop in implementing this grant, including the juvenile justice system, the local police, the workforce investment system, local foundations, and corporations.

If a CBO is applying, this section should include:

■ A clear statement indicating the school district's commitment to this project, including a commitment to making a good faith effort to sustain initiatives after Federal funds cease using average daily attendance funds and other resources. This statement should be backed up by a letter of support from the school superintendent. This letter should acknowledge that ''in accepting funds under this grant as either the grant recipient or sub-recipient, the school district agrees not to divert funds received through this grant to other purposes by reducing the annual budget the school would have received in the absence of the grant'' and that no plans are currently in place to close the school.

■ A description of the experience of key CBO and school district staff that will be involved in the project, and of how CBO staff who will serve students will be recruited.

■ A description of the experience of the CBO either in providing social services in schools with large numbers of at-risk students or in operating mentoring or other youth-serving programs.

■ A description of the requirements that will go into the grant announcement for selecting other CBOs as sub-grantees/contractors. The Department strongly encourages the competitive selection of sub-grantees and contractors either before or after grant award.

■ A discussion of the community's potential commitment to the project, including a description of organizations that serve the same neighborhoods as the school that could be potential partners, and how these organizations could help serve as a community-wide net for at-risk youth.

■ A discussion of other partners that the CBO and school district hope to develop in implementing this grant, including the juvenile justice system, the local police, the workforce investment system, local foundations, and corporations.

If a school district is applying, proposals will be evaluated under this criterion based on:

■ The commitment of the school district to the project, as demonstrated in the letter of support from the school superintendent and evidence in the application that staff at the school district level will be involved in designing and overseeing the proposed project (4 points);

■ The experience of school district staff assigned to the project, as demonstrated by their involvement in other efforts to improve and restructure high schools (4 points);

■ The requirements that will be included in the grant announcement for selecting CBO sub-grantees/contractors (4 points);

■ The potential commitment of the community to the project, as demonstrated by the description of organizations that serve the same neighborhoods as the school that could be potential partners and how these organizations could help serve as a community-wide net for at-risk youth (4 points).

■ Plans for developing partnerships with other agencies and organizations, as demonstrated by how specific and practical such plans are (4 points).

If a CBO is applying, proposals will be evaluated under this criterion based on:

■ The commitment of the school district to the project, as demonstrated in the letter of support from the school superintendent and evidence in the application that staff at the school district level will be involved in designing and overseeing the proposed project (4 points);

■ The experience of CBO and school district staff assigned to the project, as demonstrated by their involvement in other efforts to improve and restructure high schools (4 points);

■ The experience of the CBO either in providing social services in schools with large numbers of at-risk students or in operating mentoring or other youth-serving programs (4 points).

■ The potential commitment of the community to the project, as demonstrated by the description of organizations that serve the same neighborhoods as the school that could be potential partners and how these organizations could help serve as a community-wide net for at-risk youth (4 points);

■ Plans for developing partnerships with other agencies and organizations, as demonstrated by how specific and practical such plans are (4 points).

B. Review and Selection Process

Proposals that are timely and responsive to the requirements of this SGA will be rated against the criteria listed above by an independent panel comprised of representatives from DOL and other reviewers. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as geographic balance, the availability of funds, and which proposals are most advantageous to the Government. Applications that receive a score of 80 and above will be considered for award. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. If no fundable proposals are received for a given category or if fewer fundable proposals are received for a category than we intended to fund, additional awards may be made in the other categories. The Government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant (including electronic signature via E–Authentication on *http://www.grants.gov*).

C. Anticipated Announcement and Award Dates

Both school districts and CBOs applying for these grants should include in their technical proposals the name and contact information for persons who will be available for discussions with the Department.

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA homepage (*http://www.doleta.gov*). The notice of award signed by the Grants Officer will serve as the authorizing document. Applicants not selected for award will be notified as soon as possible.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees, including faith-based organizations, will be subject to all applicable Federal laws (including provisions of appropriation laws), regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA must comply with all provisions of this solicitation and will be subject to the following statutory and administrative standards and provisions, as applicable to the particular grantee:

a. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

b. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

d. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

e. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

f. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

g. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

h. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

i. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

j. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;

k. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

The following administrative standards and provisions may be applicable:

a. Workforce Investment Act—20 Code of Federal Regulations (CFR) Part 667. (General Fiscal and Administrative Rules).

b. 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

c. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998.

d. 29 CFR part 1926, Safety and Health Regulations for Construction of the Occupational Safety and Health Act (OSHA); and

e. 29 CFR part 570, Child Labor Regulations, Orders and Statements of Interpretation of the Employment Standard Administration's Child Labor Provisions.

In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c) (4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, *i.e.,* avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

2. Special Program Requirements

Evaluation. DOL will require that grantees participate in an evaluation of overall performance. To measure the effect of the project, DOL will arrange for or conduct an independent evaluation of the outcomes and benefits of the project. The grantee must agree to make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of DOL, including after the expiration date of the grant.

C. Reporting and Accountability

These grants will be subject to performance standards measuring their progress in meeting the goals of the grants. The problems of truancy, failing the ninth grade, having low reading and math skills, dropping out of school, creating behavioral problems in school, and participating in violence and gangs are all interrelated, and the performance measures for these grades will reflect each of these. National goals will be set after grant award in the following areas:

■ Decreasing the number and seriousness of behavioral incidents at the school, including the rate of all incidents involving suspension, expulsion, or arrest and the rate of severe incidents that count towards persistently dangerous status. This will require tracking the number and type of behavioral incidents at the school each year. This information is already collected by school districts.

■ Decreasing the number of students who become involved in the juvenile justice system. This will require increased coordination with the city's juvenile justice system. Such increased coordination also will have positive benefits in serving youth involved in delinquency, as research shows that such youth currently have very poor educational outcomes.

■ Improving the high school's daily attendance rate, including increasing the school's overall average daily attendance and decreasing the percentage of students at the school who miss 54 days or more during the year. This will involve tracking the high school's daily attendance. High schools and school districts already collect this information.

■ Decreasing its rate of students failing the ninth grade, including both the rate of first-time 9th graders failing and the rate of repeating 9th graders failing for a subsequent year. This will require tracking the number of entering 9th graders who fail the ninth grade and the number of repeating 9th graders who fail the ninth grade a second time. High schools and school districts already collect this information.

■ Increasing the reading and math scores of its students, including both the percentage of students testing at grade level and the percentage of basic skills deficient students who improve at least two grade levels during the year in reading and or math. This will involve conducting baseline and follow-up reading and math tests of students. DOL will accept the results of reading and math tests already being conducted by high schools that are the focus of these grants. Given that some special groups of youth such as repeating ninth graders or entering ninth graders will likely receive more concentrated reading and math instruction under this grant, it will make sense from both a programmatic and a performance management standpoint to provide additional reading and math testing of these students.

■ Decreasing the school's dropout rate, as measured both by comparing the number of graduates from the school to the entering ninth grade class four years earlier and by looking at the number of entering ninth graders at the school who graduate four years later from any public school in the district. This will require tracking the number of students in the school's ninth grade each year and the subsequent number of students who graduate four years later. High schools and school districts already collect such information.

■ Increasing the proportion of the school's graduating seniors who enroll in post-secondary education. This will involve the school district enrolling in a national data base that identifies students in colleges across the country.

■ Reaching a targeted number of students participating in mentoring programs. This will involve documenting the number of students in the school's mentoring component.

■ The cost-effectiveness of the program. DOL will coordinate with grantees in setting this measure and in identifying the data sources necessary for this element. Quarterly financial reports, quarterly progress reports, and management information system (MIS) data will be submitted by the grantee electronically. Grantees must agree to meet DOL reporting requirements. The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report is required until such time as all funds have been expended or the grant period has expired, whichever is sooner. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System; information and instructions will be provided to grantees.

Quarterly Progress Reports. The grantee must submit a quarterly progress report based on a DOL template to its designated Federal Project Officer within 45 days after the end of each quarter. This report should provide a detailed account of activities undertaken during that quarter. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.

2. Progress toward meeting performance outcomes.

3. Challenges being faced by the grantee in implementing the project.

MIS Reports. Organizations will be required to submit updated MIS data within 45 days after the end of each quarter based on a DOL template that reports on enrollment, services provided, placements, outcomes, and follow-up status.

VII. Agency Contacts

For further information regarding this SGA, please contact Serena Boyd, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3338 (please note this is not a toll-free number). Applicants should fax all technical questions to (202) 693–2705 and must specifically address the fax to the attention of Serena Boyd and should include SGA/DFA PY 08–14, a contact name, fax and phone number, and e-mail address. This announcement is being made available on the ETA Web

site at *http://www.doleta.gov/sga/sga.cfm,* at *http://www.grants.gov,* and in the **Federal Register**.

VIII. Additional Resources and Other Information

A. High Schools and Ungraded Schools That Serve Primarily Students Ages 14 and Above That Have Been Designated as Persistently Dangerous for the 2008–2009 School Year and That Are Not Currently Receiving a Grant From DOL for These Purposes

Maryland

■ Reginald F. Lewis High School, Baltimore, 788 students.

New Jersey

■ Plainfield High School, Plainfield, 1,803 students.

New York

■ PS 12, Lewis and Clark School, New York City, 246 students ages 14 and above.
■ PS/IS 25 South Richmond High School, New York City, 306 students ages 14 and above.
■ Marta Valle Secondary School, New York City, 409 students.
■ Schenectady High School, Schenectady, 2,902 students.

Oregon

■ McKay High School, Salem, 1,791 students.

Pennsylvania

■ Edison-Fariera High School, Philadelphia, 2,400 students.
■ Frankford High School, Philadelphia, 2,057 students.
■ Martin Luther King High School, Philadelphia, 1,424 students.
■ Olney West High School, Philadelphia, 964 students.
■ Samuel Fels High School, Philadelphia, 1,498 students.
■ South Philadelphia High School, Philadelphia, 1,175 students.
■ Strawberry Mansion High School, Philadelphia, 500 students.
■ William Penn High School, Philadelphia, 689 students.

Puerto Rico

■ Superior Dra. Trina Padilla de Sanz, Arecibo, 432 students.
■ Superior Medardo Carazo, Trujillo Alto, 255 students.
■ Superior Judith Vivas, Utuado, 313 students.
■ Superior Lorenzo Coballes Gandia, Hatillo, 529 students.

B. Resources for the Applicant

DOL maintains a number of Web-based resources that may be of assistance to applicants. Questions and responses submitted to the Grant Officer regarding the SGA will be posted on the ETA Web site at *http://www.doleta.gov.* Questions will be received for one month after publication.

C. Other Information

OMB Information Collection No.: 1225–0086.

Expires: September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. Please do not return your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC, this 20th day of July 2009.

B. Jai Johnson,

Grant Officer, Employment and Training Administration.

[FR Doc. E9–17560 Filed 7–23–09; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions involving: 2009–18, Robert W. Baird & Co. Incorporated, D–11488; 2009–19, MarkWest Energy Partners, L.P., D–11498; Morgan Stanley & Co. Incorporated, D–11501, 2009–20; and The Bank of New York Mellon Corporation (BNMC) and Its Affiliates (Collectively, BNY Mellon), D–11523, 2009–21

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29

CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Robert W. Baird & Co. Incorporated; Located in Milwaukee, Wisconsin

[Prohibited Transaction Exemption 2009–18; Exemption Application Number D–11488]

Exemption

Section I. Loans Involving Auction Rate Securities

The restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (2) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 1, 2008, to the lending of Auction Rate Securities (as defined in section III(b)) by a Plan (as defined in section III(e)) to Robert W. Baird & Co. Incorporated or any of its affiliates (Baird), provided that the conditions set forth in section II have been met.[1]

Section II. Conditions

(a) The last auction for the loaned Auction Rate Security was unsuccessful;

(b) The Plan does not waive any rights or claims in connection with the Auction Rate Security as a condition of engaging in the loan (the Loan);

(c) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(d) Baird is and remains a broker-dealer registered under the Securities Exchange Act of 1934 (the Exchange Act) or is exempt from registration under section 15(a)(1) of the Exchange Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the Exchange Act);

(e) The decision to enter into a Loan is made by a Plan fiduciary who is Independent (as defined in section III(d)) of Baird. Notwithstanding the foregoing, an employee of Baird who is the Beneficial Owner (as defined in section III(c)) of a Title II Only Plan (as defined in section III(f)) may direct the Title II Only Plan to engage in a Loan if all of the other applicable conditions of this exemption have been met;

(f) Prior to any Loan, Baird shall have furnished the Plan fiduciary described in paragraph (e) with:

(1) The most recently available audited statement of Baird's financial condition, as audited by a United States certified public accounting firm;

(2) The most recently available unaudited statement of Baird's financial condition (if the unaudited statement is more recent than the audited statement described above); and

(3) A representation that, at the time the Loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the Plan. Such representations may be made by Baird's agreement that each Loan shall constitute a representation by Baird that there has been no such material adverse change. Notwithstanding the foregoing, an employee of Baird who is the Beneficial Owner of a Title II Only Plan may receive the information described in this paragraph (f) if all of the other applicable conditions of this exemption have been met;

(g) The Loan is made pursuant to a written loan agreement (the Lending Agreement), the terms of which are at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be. The Lending Agreement must contain all of the material terms of the Loan and cover only the lending of Auction Rate Securities by the Plan to Baird. Such Lending Agreement may be in the form of a master agreement covering a series of Loans;

(h) With respect to any Loan, Baird credits the lending Plan's account with Baird (the Account) with an amount of cash equal to 100 percent of the total par value of the loaned Auction Rate Securities. Baird must credit the Account by the close of business on the day on which Baird receives the Auction Rate Securities from the Plan;

(i) The Plan has the opportunity to derive compensation through the investment of the cash collateral described in paragraph (h);

(j) The Plan pays Baird a rebate fee negotiated in advance of the Loan that does not exceed the interest and/or dividends the Plan receives in connection with its ownership of the loaned Auction Rate Securities;

(k) The Plan may terminate the Loan at any time and for any reason;

(l) Baird may terminate the Loan if:

(1) The Plan closes its Account or reduces the balance thereof to less than 100 percent of the total par value of the Auction Rate Securities that are the subject of the Loan;

(2) The Plan is an individual retirement account described in section 4975(e)(1)(B)–(F) of the Code (an IRA) and the Beneficial Owner of the IRA dies or divides the IRA pursuant to a divorce, annulment or marital settlement;

(3) The Auction Rate Security associated with the Loan is redeemed by its issuer or may be sold at auction for its par value, or;

(4) Baird identifies a secondary market for the Auction Rate Security which Baird has a reasonable basis to believe will permit the lending Plan to receive no less than 90% of the Security's par value if the Auction Rate Security is promptly offered for sale on such market;

(m) Following any Loan termination as set forth in (k) or (l), Baird shall deliver Auction Rate Securities to the Plan which are identical (or the equivalent thereof (in the event of a reorganization, recapitalization or merger of the issuer of the Auction Rate Securities)) to the Auction Rate Securities borrowed by Baird within the lesser of:

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Plan and Baird;

(n) Following any Loan termination as set forth in (k) or (l), if Baird fails to return all the borrowed Auction Rate Securities (or the equivalent thereof (in the event of a reorganization, recapitalization or merger of the issuer of the Auction Rate Securities)) within the timeframe set forth in paragraph (m), the Plan may keep the full amount of cash collateral provided by Baird in connection with the Loan;

(o) Following any Loan termination as set forth in (k) or (l), if the Plan fails to return the full amount of cash collateral:

(1) Baird may liquidate the borrowed Auction Rate Securities, in which case the Plan's obligation to return the cash collateral shall terminate. If the amount received by Baird from the liquidation (after deducting brokerage commissions and other transaction costs) exceeds the amount of cash collateral provided by Baird in connection with the Loan, then Baird shall pay such excess to the Plan. If the amount received by Baird from the liquidation (after deducting brokerage commissions and other transaction costs) is less than the amount of cash collateral provided by Baird in connection with the Loan, then the Plan shall pay such deficiency to Baird; or

[1] For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(2) If Baird is unable to liquidate the ARS, Baird will retain the ARS and reserve its right to sue the Plan;

(p) (1) Where the Plan, as lender, does not return the full amount of cash collateral in connection with a Loan termination, Baird, as borrower, can seek interest at the prime rate on the amount of cash collateral owed by the Plan;

(2) Where Baird, as borrower, does not return the excess described in (o)(1), if any, the Plan, as lender, can seek interest at the prime rate on the amount of excess owed by Baird; and

(q) If Baird fails to comply with any provision of a loan agreement which requires compliance with this exemption the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of ERISA solely by reason of Baird's failure to comply with the conditions of the exemption.

Section II. Definitions

(a) The term ''affiliate'' means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''Auction Rate Security'' or ''ARS'' means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term ''Beneficial Owner'' means: the individual for whose benefit a Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term ''Independent'' means a person who is: (1) Not Baird or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term ''Plan'' means: any plan described in section 3(3) of the Act and/or section 4975(e)(1)(B)–(F) of the Code; and

(f) The term ''Title II Only Plan'' means: any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on January 21, 2009 at 74 FR 3650.

FOR FURTHER INFORMATION CONTACT: Chris Motta of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

MarkWest Energy Partners, L.P.; Located in Denver, CO

[Prohibited Transaction Exemption 2009–19, Application No. D–11498]

Exemption

I. Retroactive Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[2] shall not apply, effective February 21, 2008:

(a) To the acquisition by the individually, directed accounts (the Account(s)) of participants in the MarkWest Hydrocarbon, Inc. 401(k) Savings and Profit-Sharing Plan (the Plan), of publicly traded partnership units (the Units) issued by MarkWest Energy Partners, LP (Partners), the parent of MarkWest Hydrocarbon Inc. (Hydrocarbon), which is the sponsor of the Plan, as a result of the conversion of the common stock of Hydrocarbon (the Stock) held by the Plan into Units, pursuant to a plan of Redemption and Merger (the Merger); and

(b) To the holding of such Units by the Accounts in the Plan; provided that the conditions, as set forth, below, in this section I(b)(1) through (13), and the general conditions, as set forth, below, in section III of this exemption, were satisfied at the time the transaction, described, above, in sections I(a) of this exemption, was entered into and the transaction, described, above, in section I(b) of this exemption occurred:

(1) The past acquisition and holding of the Units by the Accounts in the Plan occurred in connection with the conversion of the Stock, pursuant to the terms of the Merger, which was the result of an independent act of Hydrocarbon, as a corporate entity;

(2) All shareholders of the Stock, including the participants in the Accounts in the Plan, were treated in a like manner with respect to all aspects of the redemption and conversion of the Stock, pursuant to the terms of the Merger;

(3) The past acquisition and holding of the Units by the Accounts in the Plan occurred in accordance with provisions in the Plan for individual participant direction of the investment of the assets of such Accounts;

(4) The past acquisition and holding of the Units were each one-time transactions, and the dispositions of the Units by the Accounts in the Plan occurred in a series of transactions for cash on the New York Stock Exchange (NYSE);

(5) The participants in the Accounts in the Plan were provided with all shareholder rights and with the opportunity to direct the trustee of the Plan to vote ''for,'' ''against,'' or ''abstain'' with regard to the redemption and conversion of the Stock held in the Accounts in the Plan, pursuant to the terms of the Merger.

(6) The decision as to which compensation package to accept, in connection with the redemption and conversion of the Stock held in Accounts in the Plan, was made in accordance with the directions of the individual participants in whose Accounts such Stock was held, or, in the case of Accounts in the Plan for which no participant direction was given, the decision as to which compensation package to accept, in connection with the redemption and conversion of the Stock held in such Accounts in the Plan, was made in accordance with the directions of an independent, qualified fiduciary (the I/F), acting on behalf of such Accounts;

(7) The Units acquired, as a result of the conversion of the Stock held in the Accounts in the Plan, pursuant to the terms of the Merger, were held in such Accounts for no more than a period of sixty (60) days after such Units were acquired by such Accounts;

(8) The Accounts in the Plan disposed of all of the Units that such Accounts acquired as a result of the conversion of the Stock; and such dispositions occurred on the NYSE in a series of blind transactions for cash resulting in a weighted average price per Unit of no less than $32.394,

(9) The cash proceeds from such dispositions of the Units by the Accounts in the Plan were distributed thereafter to each of the Accounts based on the number of Units held in each such Account;

(10) The decision to dispose of the Units, acquired by the Accounts in the Plan as a result of the conversion of the Stock was made by the I/F, acting on behalf of each such Account;

(11) The Accounts in the Plan did not pay any fees, commissions, transaction costs, or other expenses in connection with the redemption of the Stock by Hydrocarbon, the conversion of the Stock into Units, the acquisition and holding of such Units by such Accounts in the Plan, or the disposition of the Units on the NYSE;

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(12) At the time each of the transactions, described, above, in sections I(a)and I(b) of this exemption occurred, the individual participants whose Accounts in the Plan engaged in each such transaction, or the I/F, acting on behalf of Accounts in the Plan for which no participant direction was given, determined that each such transaction was in the interest of the participants and beneficiaries of such Accounts; and

(13) The I/F took all appropriate actions necessary to safeguard the interests of the Accounts in the Plan, in connection with the transactions, described, above, in sections I(a) and I(b) of this exemption.

II. Prospective Transactions

The restrictions of sections 406(a)(1)(E) and 406(a)(2) of the Act shall not apply, effective, as of the date a final exemption is published in the **Federal Register** to:

(a) The purchase of Units in the future by the Accounts in the Plan, and

(b) the holding of such Units by the Accounts in the Plan, provided that the conditions, as set forth below, in this section II(b)(1) through (8), and the general conditions, as set forth, below, in section III of this exemption, are satisfied at the time the transaction, described, above, in section II(a) of this exemption is entered into, and at the time the transaction, described, above, in section II(b) of this exemption occurs:

(1) The decision by the Accounts in the Plan as to whether to engage in the purchase, the holding, or the sale of the Units shall be made by the individual participants of the Accounts in the Plan which engage in such transactions;

(2) Hydrocarbon, rather than the Accounts in the Plan, shall bear any fees, commissions, expenses, or transaction costs, with respect to the purchase, holding, or sale of the Units;

(3) Each purchase and each sale of any of the Units shall occur only in blind transactions for cash on the NYSE at the fair market value of such Units on the date of each such purchase and each such sale;

(4) Each purchase and each sale of any of the Units shall occur on the same day (or if such day is not a trading day, the next day) as the direction to purchase or to sell the Units is received by the administrator of the Plan from the applicable participant of an Account which is engaging in such purchase or such sale;

(5) the terms of each purchase and each sale are at least as favorable to the Account as terms generally available in comparable arm's-length transactions between unrelated parties;

(6) prior to the purchase by an Account in the Plan of any Units, Partners provides the participant who is directing the investment of such Account in the Units with the most recent prospectus describing the Units, and the most recent quarterly statement, and annual report, concerning Partners, and thereafter, provides such participant with updated prospectuses on the Units, and updated quarterly statements, and annual reports of Partners, as published;

(7) Prior to a participant of an Account in the Plan engaging in the purchase of any Units, Partners must provide the following disclosures to such participant. The disclosure must contain the following information regarding the transactions and a supplemental disclosure must be made to the participant directing the covered investments if material changes occur. This disclosure must include:

(A) Information relating to the exercise of voting, tender, and similar rights with respect to the Units;

(B) The exchange or market system where the Units are traded; and

(C) A statement that a copy of the proposed and final exemption shall be provided to participants upon request.

(8) Each participant in an Account in the Plan shall have discretionary authority to direct the investment of such Account:

(A) To sell the Units purchased by such Account no less frequently than monthly, and

(B) To vote, tender, and exercise similar rights with respect to the Units held in such Account.

III. General Conditions

(a) Partners or its affiliates maintain, or cause to be maintained, for a period of six (6) years from the date of each of the covered transactions such records as are necessary to enable the persons described, below, in section III(b)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to the Plan which engages in the covered transactions, other than Partners and its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by section III(b)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Partners and its affiliates, such records are lost or destroyed prior to the end of the six-year period.

(b)(1) Except as provided, below, in section III(b)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section III(a) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of the Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the Plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in section III(b)(1)(B)–(D) shall be authorized to examine trade secrets of Partners and its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should Partners or its affiliates refuse to disclose information on the basis that such information is exempt from disclosure, Partners or its affiliates shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on May 6, 2009, at 74 FR 20974.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Morgan Stanley & Co. Incorporated; Located in New York, New York

[Prohibited Transaction Exemption 2009–20 Exemption Application Number D–11501]

Exemption

Section I. Sales of Auction Rate Securities From Plans to Morgan Stanley: Unrelated to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in section V(e)) of an Auction Rate Security (as defined in section V(c)) to Morgan Stanley & Co. Incorporated (Morgan Stanley), where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in section V(f)), provided that the conditions set forth in section II have been met.[3]

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Morgan Stanley to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Morgan Stanley for its own employees (a Morgan Stanley Plan), the Unrelated Sale is made pursuant to a written offer by Morgan Stanley (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Morgan Stanley, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Morgan Stanley Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale, including, but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is Independent (as defined in section V(d)) of Morgan Stanley. Notwithstanding the foregoing: (1) In the case of an individual retirement account (an IRA, as described in section V(e) below) which is beneficially owned by an employee, officer, director or partner of Morgan Stanley, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Morgan Stanley Plan or a pooled fund maintained or advised by Morgan Stanley, the decision to accept the Offer may be made by Morgan Stanley after Morgan Stanley has determined that such purchase is in the best interest of the Morgan Stanley Plan or pooled fund; [4]

(h) Except in the case of a Morgan Stanley Plan or a pooled fund maintained or advised by Morgan Stanley, neither Morgan Stanley nor any affiliate exercises investment discretion or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Morgan Stanley and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Morgan Stanley and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(i); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Morgan Stanley or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(i) Except as provided below in paragraph (l)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in an Unrelated Sale, or any duly authorized employee or representatives of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(ii) None of the persons described above in paragraph (l)(i)(B)–(C) shall be authorized to examine trade secrets of Morgan Stanley, or commercial or financial information which is privileged or confidential; and

(iii) Should Morgan Stanley refuse to disclose information on the basis that such information is exempt from disclosure, Morgan Stanley shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

[3] For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[4] The Department notes that the Act's general standards of fiduciary conduct also apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Morgan Stanley for the par value of the Auction Rate Security. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of transaction following disclosure by Morgan Stanley of all relevant information.

Section III. Sales of Auction Rate Securities From Plans to Morgan Stanley: Related to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective August 1, 2008, to the sale by a Plan of an Auction Rate Security to Morgan Stanley, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer specifically describes, among other things:

(1) How a Plan may determine: The Auction Rate Securities held by the Plan with Morgan Stanley; the number of shares and par value of the Auction Rate Securities; the interest or dividend amounts that are due with respect to the Auction Rate Securities; purchase dates for the Auction Rate Securities; and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(6) The timing for acceptance by Morgan Stanley of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by Morgan Stanley for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(9) The expiration date of the Offer;

(10) The fact that Morgan Stanley may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Offer as Morgan Stanley deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to the Plan.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in section II have been met.

V. Definitions

For purposes of this exemption:

(a) The term ''affiliate'' means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''control'' means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term ''Auction Rate Security'' means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch Auction process;

(d) A person is ''Independent'' of Morgan Stanley if the person is: (1) Not Morgan Stanley or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term ''Plan'' means: An individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by ERISA section 3(42); and

(f) The term ''Settlement Agreement'' means: A legal settlement involving Morgan Stanley and a U.S. state or federal authority that provides for the purchase of an ARS by Morgan Stanley from a Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on February 25, 2009 at 74 FR 8580.

FOR FURTHER INFORMATION CONTACT: Chris Motta of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The Bank of New York Mellon Corporation (BNYMC) and Its Affiliates (collectively, BNY Mellon); Located in New York, New York

Prohibited Transaction Exemption 2009–21; Exemption Application Number D–11523

Exemption

Section I. Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 3, 2008, to the cash sale (the Sale) by a Plan (as defined in section II(d)) of certain Auction Rate Securities (as defined in section II(b)) to BNY Mellon, provided that the following conditions are met:

(a) The Sale was a one-time transaction for cash payment made on or before December 31, 2008 on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Plan received an amount equal to the par value of the Auction Rate Securities (the Securities) plus accrued but unpaid income (interest or dividends, as applicable) as of the date of the Sale;

(c) The last auction for the Securities was unsuccessful;

(d) The Sale was made in connection with a written offer by BNY Mellon containing all of the material terms of the Sale;

(e) The Plan did not bear any commissions or transaction costs with respect to the Sale;

(f) A Plan fiduciary independent of BNY Mellon (in the case of a Plan that is an IRA, the individual for whom the IRA is maintained) determined that the Sale of the Securities was appropriate for, and in the best interests of, the Plan at the time of the transaction, and the Plan's decision to enter into the transaction was affirmatively made by such independent fiduciary on behalf of the Plan;

(g) BNY Mellon took all appropriate actions necessary to safeguard the interests of each Plan in connection with the Sale;

(h) The Plan does not waive any rights or claims in connection with the Sale;

(i) The Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(j) If the exercise of any of BNY Mellon's rights, claims or causes of action in connection with its ownership of the Securities results in BNY Mellon recovering from the issuer of the Securities, or any third party, an

aggregate amount that is more than the sum of:

(1) The purchase price paid to the Plan for the Securities by BNY Mellon; and

(2) the income (interest or dividends, as applicable) due on the Securities from and after the date BNY Mellon purchased the Securities from the Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities, BNY Mellon will refund such excess amount promptly to the Plan (after deducting all reasonable expenses incurred in connection with the recovery);

(k) Neither BNYMC nor any affiliate exercises investment discretion or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the decision to accept the written offer or retain the Security;

(l) BNY Mellon maintains, or causes to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (m)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a Plan which engages in the covered transactions, other than BNY Mellon, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (m)(i);

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of BNY Mellon, such records are lost or destroyed prior to the end of the six-year period.

(m)(i) Except as provided, below, in paragraph (m)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (l) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in a covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described, above, in paragraph (m)(i)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon, or commercial or financial information which is privileged or confidential; and

(iii) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II. Definitions

(a) The term ''affiliate'' means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''Auction Rate Security'' or ''Security'' means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a ''Dutch auction'' process;

(c) The term ''Independent'' means a person who is not BNYMC or an affiliate (as defined in Section II(a)); and

(d) The term ''Plan'' means any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 6, 2009 at 74 FR 20987.

DATES: *Effective Date:* This exemption is effective from October 3, 2008 through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of July, 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–17468 Filed 7–23–09; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 74 FR 24043, and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comment: On May 22, 2009, we published in the **Federal Register** (74 FR 24043) a 60-day notice of our intent to request reinstatement of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending July 21, 2009. One comment came from B. Sachau of Florham Park, NJ, via e-mail on May 22, 2009, who objected to this information collection.

Response: (Some background on the program to clarify the survey request is provided.) The Alliances for Broadening Participation in STEM (ABP) includes three programs: the Louis Stokes Alliances for Minority Participation (LSAMP) program; the Bridge to the Doctorate (LSAMP–BD) Activity; and the Alliances for Graduate Education and the Professoriate (AGEP) program.

This portfolio of programs seeks to increase the number of students successfully completing quality degree programs in science, technology, engineering and mathematics (STEM). Particular emphasis is placed on transforming STEM education through innovative academic strategies and experiences in support of groups that historically have been underrepresented in STEM disciplines: African-Americans, Alaskan Natives, Native Americans, Hispanic Americans, and Native Pacific Islanders.

Managed synergistically, the ABP cluster enables seamless transitions from the STEM baccalaureate to attainment of the doctorate and entry to the STEM professoriate. ABP support begins at the baccalaureate level through the LSAMP program. LSAMP emphasizes development of broad based regional and national alliances of academic institutions, school districts, State and local governments, and the private sector to increase the diversity and quality of the STEM workforce. Eligible LSAMP undergraduate students may receive continued support for up to two additional years of STEM graduate study through the Bridge to the Doctorate (BD) Activity. The Bridge to the Doctorate provides significant financial support for matriculating candidates in STEM graduate programs at eligible alliance sites.

Alliances for Graduate Education and the Professoriate (AGEP) furthers the graduate education of underrepresented STEM students through the doctorate level, preparing them for fulfilling opportunities and productive careers as STEM faculty and research professionals. AGEP also supports the transformation of institutional culture to attract and retain STEM doctoral students into the professorate. Further information may be found via the AGEP Web page: *http://www.agep.us/index.asp#maincontent.*

NSF believes that because the comment does not contain suggestions for altering the collection of information for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

Title of Collection: National Evaluation of the Alliances for Graduate Education and the Professoriate Faculty and Student Surveys.

OMB Control No.: 3145–NEW.

Abstract: The Division of Human Resource Development (EHR/HRD) of the National Science Foundation has requested impact information on the Alliances for Graduate Education and the Professoriate (AGEP) Program. Funded by NSF, the AGEP Program has funded 28 alliances of colleges and universities to promote the participation of underrepresented minority groups in PhD programs in the fields of science, technology, engineering, and mathematics (STEM). The ultimate goal of the program is to increase the number of underrepresented minorities in these fields who enter the professoriate. NSF now seeks follow-up information on program participants—that is, students and faculty— to determine what impact the program has had on graduate students' decisions to enroll in and graduate from STEM doctoral programs and enter the professoriate. NSF proposes a one-time on-line survey of STEM graduate students currently enrolled in STEM doctoral programs and faculty members at universities taking part in AGEP.

Estimate of Burden: The Foundation estimates that, on average, 30 minutes per respondent will be required to complete the surveys, for a total of 8,250 hours for all respondents. Respondents from the 104 institutions that received NSF AGEP support will be asked to complete this survey once.

Respondents: STEM faculty at AGEP institutions and STEM graduate students at AGEP institutions.

Estimate total number of responses: 16,500.

Estimated Total Annual Burden on Respondents: 8,250 hours.

Dated: July 21, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer,

National Science Foundation.

[FR Doc. E9–17678 Filed 7–23–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0323]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–3038.

FOR FURTHER INFORMATION CONTACT: Margie Kotzalas, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3202 or e-mail to *Margie.Kotzalas@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information and methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''Standard Format and Content of License Applications for Plutonium Processing and Fuel Fabrication Facilities,'' is temporarily identified by its task number, DG–3038, which should be mentioned in all related correspondence. DG–3038 is a proposed Revision 1 of Regulatory Guide 3.39, dated January 1976.

This guide endorses the standard format and content for safety analysis reports (SARs) and integrated safety analysis (ISA) summaries described in the current version of NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide Fuel Fabrication Facility,'' as a method that the NRC staff finds acceptable for meeting the regulatory requirements.

Title 10, of the *Code of Federal Regulations,* Part 70, ''Domestic Licensing of Special Nuclear Material'' (10 CFR part 70), subpart H, ''Additional Requirements for Certain Licensees Authorized to Possess a Critical Mass of Special Nuclear Material'' identifies risk-informed performance requirements for plutonium processing and fuel fabrication facilities. It requires applicants to complete an ISA and submit an ISA summary and other information to the NRC for approval.

II. Further Information

The NRC staff is soliciting comments on DG–3038. Comments may be accompanied by relevant information or supporting data and should mention DG–3038 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Division of Administrative Services, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0323]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–3038 may be directed to the NRC contact, Margie Kotzalas at (301) 492–3202 or e-mail to Margie.Kotzalas@nrc.gov.

Comments would be most helpful if received by September 21, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–3038 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML091750253.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 16th day of July, 2009.

For the Nuclear Regulatory Commission.

Mark P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–17689 Filed 7–23–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0157]

Extension of Public Scoping Period for the Environmental Impact Statement for the Proposed General Electric—Hitachi Global Laser Enrichment Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of Public Comment Period.

SUMMARY: The Nuclear Regulatory Commission (NRC) is extending the public comment period on the scope of the Environmental Impact Statement (EIS) for the proposed General Electric—Hitachi (GEH) Global Laser Enrichment (GLE) facility in New Hanover County, North Carolina, to August 31, 2009. The original Notice of Intent to Prepare an EIS, which was published in the **Federal Register** on April 9, 2009 (74 FR 16237), indicated public comments should be submitted by June 8, 2009.

On June 26, 2009, GEH submitted additional information to complete an application for a license to authorize the construction and operation of the proposed uranium enrichment facility. The public comment period on the scope of the EIS is being extended to allow members of the public to review publicly-available portions of the license application during the scoping period for the EIS. Members of the public are invited and encouraged to submit comments regarding the appropriate scope and content of the EIS.

DATES: NRC is extending the public comment period on the scope of the EIS to August 31, 2009. Comments should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical.

ADDRESSES: Comments may be sent electronically to *GLE.EIS@nrc.gov*. Comments also may be sent to the Chief, Rulemaking and Directives Branch, Division of Administrative Services, Mail Stop TWB 5B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–7016 when submitting comments.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the licensing review of the GLE application, please contact Tim Johnson at (301) 492–3121 or *Timothy.Johnson@NRC.gov*. For general information on the NRC environmental review process or the environmental review related to the GLE application, please contact Christianne Ridge at (301) 415–5673 or *Christianne.Ridge@NRC.gov*.

Information and documents associated with the proposed GLE facility, including the Environmental Report (ER) submitted by GEH on January 30, 2009, are available for public review through NRC's electronic reading room at *http://www.nrc.gov/reading-rm/adams.html*. Members of the public may access the applicant's ER in NRC's Agencywide Documents Access and Management System (ADAMS) at accession number ML090910573 or on NRC's materials environmental reviews Webpage at *http://www.nrc.gov/materials/active-nepa-reviews.html*.

A copy of the applicant's ER is available for public inspection at the New Hanover County Library, located at 201 Chestnut Street, Wilmington, North Carolina 28401. Documents also may be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION: On January 30, 2009, GEH submitted an ER that addresses the impacts of constructing, operating, and decommissioning a laser-based uranium enrichment facility. GEH proposes to locate the facility on the existing General Electric Company (GE)/Global Nuclear Fuel–Americas (GNF–A) site near Wilmington, in New Hanover County, North Carolina. The NRC, in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and NRC regulations at 10 CFR Part 51, will prepare an EIS evaluating this proposed action.

On June 26, 2009, GEH completed the license application by submitting additional information related to facility safety and security in accordance with the Atomic Energy Act. NRC will conduct a 30-day acceptance review to determine whether it will accept the application for detailed review. If NRC accepts the application, publicly-available portions of the license application will be made available in ADAMS. In addition, the project Web site at *http://www.nrc.gov/materials/fuel-cycle-fac/laser.html* will indicate how to access publicly-available portions of the applicant's license application. Portions of the license application that contain proprietary, classified, security-related or export-controlled information will be withheld from public availability. The public comment period on the scope of the EIS is being extended to allow members of the public to review publicly-available portions of the license application during the scoping period.

Dated at Rockville, Maryland, this 17th day of July 2009.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–17687 Filed 7–23–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Glenda Haendschke, Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between May 1, 2009, and May 31, 2009. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year. The following Schedules are *not* codified in the code of Federal Regulations. These are agency specific exceptions.

Schedule A

The following Schedule A authority for the Department of Treasury is amended to read: Section 213.3105(a)(3) Not to exceed 100 positions in the Office of the Undersecretary for Terrorism and Financial Intelligence.

Schedule B

No Schedule B authority to report.

Schedule C

The following Schedule C appointments were approved during May 2009.

Office of Management and Budget

BOGS90028 Confidential Assistant, Office of Management and Budget. Effective May 4, 2009.

BOGS90013 Legislative Assistant for Legislative Affairs. Effective May 13, 2009.

BOGS90016 Confidential Assistant for Economic Policy. Effective May 13, 2009.

BOGS90017 Confidential Assistant for General Government Programs. Effective May 13, 2009.

BOGS90029 Confidential Assistant to the General Counsel. Effective May 13, 2009.

BOGS90031 Deputy to the Associate Director for Legislative Affairs (House). Effective May 27, 2009.

BOGS90032 Deputy Press Secretary, Strategic Planning and Communications. Effective May 28, 2009.

Office of the United States Trade Representative

TNGS70002 Special Assistant to the Deputy United States Trade Representative. Effective May 22, 2009.

TNGS90008 Writer-Editor for Public and Media Affairs. Effective May 22, 2009.

Department of State

DSGS69885 Staff Assistant for Legislative and Intergovernmental Affairs. Effective May 6, 2009.

DSGS69849 Staff Assistant to the HIV/AIDS Coordinator. Effective May 22, 2009.

DSGS69825 IT Specialist—Policy and Planning, Under Secretary for Management. Effective May 27, 2009.

Department of the Treasury

DYGS00419 Special Assistant to the Executive Secretary. Effective May 1, 2009.

DYGS60418 Special Assistant to the Executive Secretary. Effective May 5, 2009.

DYGS00384 Special Assistant to the Chief of Staff. Effective May 6, 2009.

DYGS00434 Special Assistant to the Deputy Chief of Staff. Effective May 6, 2009.
DYGS00844 Public Affairs Specialist. Effective May 6, 2009.
DYGS01377 Staff Assistant for Scheduling and Advance. Effective May 6, 2009.
DYGS60351 Senior Advisor to the Assistant Secretary (Public Affairs). Effective May 6, 2009.
DYGS60391 Advance Specialist for Scheduling and Advance. Effective May 6, 2009.
DYGS00398 Senior Advisor for Domestic Finance. Effective May 8, 2009.
DYGS60412 Advance Specialist for Scheduling and Advance. Effective May 8, 2009.
DYGS00464 Staff Assistant for Legislative Affairs. Effective May 15, 2009.
DYGS00440 Public Affairs Specialist. Effective May 19, 2009.
DYGS00490 Special Assistant to the Special Envoy for China and the Strategic Economic Dialogue. Effective May 29, 2009.
DYGS00518 Public Affairs Specialist. Effective May 29, 2009.
DYGS60381 Special Assistant for Legislative Affairs (Appropriations and Management). Effective May 29, 2009.
DYGS60405 Special Assistant for Legislative Affairs (International). Effective May 29, 2009.

Department of Defense

DDGS17210 Special Assistant to the Assistant Secretary Defense (International Security Affairs). Effective May 1, 2009.
DDGS17213 Special Assistant to the Assistant Secretary Defense (Reserve Affairs). Effective May 4, 2009.
DDGS17208 Special Assistant to the Assistant Secretary Defense (Comptroller). Effective May 5, 2009.
DDGS17202 Principal Director, Nuclear and Missile Defense Policy for Defense (Global Security Affairs). Effective May 7, 2009.
DDGS17212 Special Assistant to the Principal Under Secretary of Defense (Policy). Effective May 8, 2009.
DDGS17211 Special Assistant to the Principal Deputy Under Secretary of Defense (Middle East). Effective May 15, 2009.
DDGS17214 Special Assistant to the Principal Deputy Under Secretary of Defense (Nuclear, Chemical and Biological Defense Programs). Effective May 19, 2009.
DDGS17216 Special Assistant to the Deputy Assistant Secretary of Defense (Central Asia). Effective May 21, 2009.
DDGS17215 Special Assistant to the Deputy Assistant Secretary of Defense (Legislative Affairs). Effective May 26, 2009.
DDGS17217 Special Assistant to the Director of Net Assessment. Effective May 26, 2009.
DDGS17218 Special Assistant for Defense (Legislative Affairs). Effective May 26, 2009.

Department of Justice

DJGS00275 Senior Counsel to the Assistant Attorney General (Legal Policy). Effective May 5, 2009.
DJGS00498 Confidential Assistant to the Assistant Attorney General. Effective May 5, 2009.
DJGS00179 Counsel to the Principal Deputy Assistant Attorney General. Effective May 8, 2009.
DJGS00501 Speechwriter, Office of Public Affairs. Effective May 8, 2009.
DJGS00502 Special Assistant for Office of Violence Against Women. Effective May 8, 2009.
DJGS00504 Director of Advance for the Attorney General. Effective May 12, 2009.
DJGS00497 Special Assistant, Bureau of Justice Assistance. Effective May 15, 2009.
DJGS00503 Director of Scheduling for the Attorney General. Effective May 15, 2009.
DJGS00187 Counsel to the Assistant Attorney General Civil Division. Effective May 21, 2009.
DJGS00506 New Media Specialist, Office of Public Affairs. Effective May 21, 2009.

Department of Homeland Security

DMGS00662 Confidential Assistant, Immigration and Customs Enforcement. Effective May 1, 2009.
DMGS00738 Deputy Director of Scheduling and Protocol. Effective May 8, 2009.
DMGS00792 Confidential Assistant to the Deputy Chief of Staff (Policy). Effective May 8, 2009.
DMGS00793 Press Secretary for External Affairs and Communications. Effective May 8, 2009.
DMGS00795 Advisor to the Director for Policy, Customs and Border Protection. Effective May 8, 2009.
DMGS00803 Senior Advisor for Media and Communications for Public Affairs at Customs and Border Protection. Effective May 8, 2009.
DMGS00813 Confidential Assistant to the Deputy Chief of Staff (Policy). Effective May 8, 2009.
DMGS00395 Senior Advisor for Health Affairs and Chief Medical Officer. Effective May 15, 2009.
DMGS00819 Deputy to the Federal Coordinator for Gulf Coast Rebuilding. Effective May 22, 2009.
DMGS00449 Director of Legislative Affairs for Federal Emergency Management Agency. Effective May 29, 2009.
DMGS00651 Press Assistant for the Press Secretary. Effective May 29, 2009.
DMGS00669 Director of Legislative Affairs for Intelligence and Operations. Effective May 29, 2009.
DMGS00761 Associate Director for Public Liaison for the Gulf Coast. Effective May 29, 2009.
DMGS00768 New Media Specialist for Public Affairs. Effective May 29, 2009.
DMGS00797 Special Assistant, Immigration and Customs Enforcement. Effective May 29, 2009.
DMGS00804 Confidential Assistant for Intergovernmental Programs. Effective May 29, 2009.
DMGS00808 Special Assistant for Policy. Effective May 29, 2009.
DMGS00820 Advisor to the Deputy for Homeland Security. Effective May 29, 2009.

Department of the Interior

DIGS01159 Deputy Alaska Director, Alaskan Affairs. Effective May 1, 2009.
DIGS01160 Special Assistant, External and Intergovernmental Affairs. Effective May 21, 2009.
DIGS01161 Special Assistant to the Chief of Staff. Effective May 27, 2009.
DIGS01162 Chief of Staff for Fish and Wildlife and Parks. Effective May 27, 2009.

Department of Agriculture

DAGS00124 Chief of Staff, Foreign Agricultural Service. Effective May 7, 2009.
DAGS00118 Special Assistant, Rural Housing Service. Effective May 11, 2009.
DAGS00128 Confidential Assistant, Rural Housing Service. Effective May 11, 2009.
DAGS00133 Staff Assistant, Farm Service Agency. Effective May 11, 2009.
DAGS00134 Chief of Staff to the Administrator, Rural Housing Service. Effective May 11, 2009.
DAGS00135 Special Assistant, Rural Housing Service. Effective May 11, 2009.
DAGS00137 Confidential Assistant, Rural Housing Service. Effective May 11, 2009.
DAGS00138 Confidential Assistant, Rural Housing Service. Effective May 11, 2009.

DAGS00101 Confidential Assistant to the Chief of Staff. Effective May 19, 2009.
DAGS00110 Deputy Director of Scheduling and Advance for the Director of Communications. Effective May 19, 2009.
DAGS00114 Confidential Assistant to the Secretary. Effective May 19, 2009.
DAGS00122 Confidential Assistant for Farm and Foreign Agricultural Services. Effective May 19, 2009.
DAGS00127 Senior Advisor to the Deputy Secretary. Effective May 19, 2009.
DAGS00132 Confidential Assistant for Natural Resources and Environment. Effective May 19, 2009.
DAGS00140 Director of the Office of Faith Based and Neighborhood Outreach. Effective May 19, 2009.
DAGS00141 Confidential Assistant to the Chief Financial Officer. Effective May 19, 2009.
DAGS00143 Special Assistant, Natural Resources Conservation Service. Effective May 19, 2009.
DAGS00147 Special Assistant to the Administrator. Effective May 19, 2009.
DAGS00142 Senior Advisor for Food Safety. Effective May 21, 2009.
DAGS00144 Special Assistant, Natural Resources Conservation Service. Effective May 21, 2009.
DAGS00146 Chief of Staff to the Administrator. Effective May 21, 2009.

Department of Commerce

DCGS00202 Legislative Specialist for Legislative Affairs. Effective May 1, 2009.
DCGS00579 Director for Legislative and Intergovernmental Affairs. Effective May 1, 2009.
DCGS00639 News Media Director for Public Affairs. Effective May 1, 2009.
DCGS00100 Special Assistant to the Chief of Staff. Effective May 5, 2009.
DCGS00382 Confidential Assistant, Office of Policy and Strategic Planning. Effective May 6, 2009.
DCGS00484 Director, Office of Faith Based and Neighborhood Partnerships. Effective May 11, 2009.
DCGS00608 Confidential Assistant for International Trade. Effective May 11, 2009.
DCGS60532 Associate General Counsel. Effective May 11, 2009.
DCGS00473 Special Assistant to the General Counsel. Effective May 13, 2009.
DCGS00279 Chief of Staff for Communications and Information. Effective May 18, 2009.
DCGS00380 Confidential Assistant for International Trade Administration. Effective May 21, 2009.
DCGS00540 Chief Protocol Officer for Scheduling and Advance. Effective May 21, 2009.
DCGS00684 Director of Speechwriting for Public Affairs. Effective May 22, 2009.
DCGS00590 Confidential Assistant, Executive Secretariat. Effective May 29, 2009.

Department of Labor

DLGS60194 Director of Scheduling and Advance. Effective May 4, 2009.
DLGS60066 Special Assistant for Policy. Effective May 20, 2009.
DLGS60055 Special Assistant for Public Affairs. Effective May 21, 2009.
DLGS60267 Special Assistant, Scheduling, and Advance. Effective May 21, 2009.
DLGS60041 Staff Assistant to the Deputy Chief of Staff. Effective May 26, 2009.
DLGS60199 Special Assistant for Public Affairs. Effective May 27, 2009.

Department of Health and Human Services

DHGS00492 Deputy White House Liaison for Political Personnel, Boards and Commissions. Effective May 18, 2009.
DHGS60035 Confidential Assistant for Medicare and Medicaid Services. Effective May 18, 2009.
DHGS60661 Special Assistant, Health and Human Services. Effective May 18, 2009.

Department of Education

DBGS00409 Deputy Assistant Secretary for Vocational and Adult Education. Effective May 4, 2009.
DBGS00467 Director, Faith-Based and Community Initiatives for the Chief of Staff. Effective May 5, 2009.
DBGS00673 Confidential Assistant for Innovation and Improvement. Effective May 5, 2009.
DBGS00283 Special Assistant to the Press Secretary. Effective May 13, 2009.
DBGS00431 Press Secretary, Office of Communications and Outreach. Effective May 15, 2009.
DBGS00306 Deputy Assistant Secretary for Legislation and Congressional Affairs. Effective May 20, 2009.
DBGS00400 Deputy Assistant Secretary for Planning, Evaluation, and Policy Development. Effective May 20, 2009.
DBGS00344 Special Assistant for Legislation and Congressional Affairs. Effective May 21, 2009.
DBGS00533 Special Assistant, White House Liaison. Effective May 21, 2009.
DBGS00507 Confidential Assistant to the General Counsel. Effective May 22, 2009.
DBGS00184 Confidential Assistant to the Deputy Assistant Secretary. Effective May 29, 2009.
DBGS00202 Deputy Assistant Secretary for Enforcement for Civil Rights. Effective May 29, 2009.
DBGS00442 Confidential Assistant for Civil Rights. Effective May 29, 2009.
DBGS00507 Confidential Assistant to the General Counsel. Effective May 29, 2009.

Council on Environmental Quality

EQGS09001 Special Assistant to the Chairman (Council on Environmental Quality). Effective May 14, 2009.
EQGS09002 Staff Assistant to the Chairman (Council on Environmental Quality). Effective May 14, 2009.
EQGS09003 Special Assistant for Congressional Affairs. Effective May 14, 2009.
EQGS09004 Special Assistant for Communications. Effective May 14, 2009.
EQGS09005 Special Assistant to the Chairman (Council on Environmental Quality). Effective May 14, 2009.
EQGS09006 Special Assistant for Green Jobs, Enterprise, and Innovation to the Chairman (Council on Environmental Quality). Effective May 15, 2009.

Environmental Protection Agency

EPGS60799 Special Assistant to the Administrator. Effective May 1, 2009.

United States Tax Court

JCGS60052 Chambers Administrator for the Chief Judge. Effective May 28, 2009.

Department of Energy

DEGS00744 Deputy Director of Public Affairs. Effective May 6, 2009.
DEGS00745 Special Assistant to the Chief of Staff. Effective May 6, 2009.
DEGS00746 Special Assistant to the Chief of Staff. Effective May 15, 2009.
DEGS00747 Special Assistant to the Chief of Staff. Effective May 15, 2009.
DEGS00742 Senior Policy Advisor to the Chief of Staff. Effective May 19, 2009.
DEGS00749 Special Assistant to the Chief of Staff. Effective May 21, 2009.

Federal Energy Regulatory Commission

DRGS60009 Confidential Assistant to the Chair—Federal Energy Regulatory Commission. Effective May 4, 2009.

Small Business Administration

SBGS00643 Deputy Associate Administrator for Field Operations. Effective May 1, 2009.

SBGS00682 National Director for Native American Affairs. Effective May 6, 2009.
SBGS00594 Press Secretary for Communications and Public Liaison. Effective May 14, 2009.
SBGS00557 Deputy Associate Administrator for Communications and Public Liaison. Effective May 15, 2009.
SBGS00683 Special Assistant for Congressional and Legislative Affairs. Effective May 15, 2009.
SBGS00694 Congressional Legislative Affairs Assistant. Effective May 22, 2009.

Export-Import Bank

EBGS04544 Executive Assistant to the President and Chairman. Effective May 1, 2009.

Farm Credit Administration

FLOT00030 Associate Director of Congressional Affairs, Farm Credit Administration Board. Effective May 15, 2009.

Export-Import Bank

EBGS04544 Executive Assistant to the President and Chairman. Effective May 1, 2009.

National Aeronautics and Space Administration

NNGS01121 Special Assistant to the Chief of Staff. Effective May 4, 2009.
NNGS01122 Special Assistant to the Chief of Staff. Effective May 4, 2009.

Commission on Civil Rights

CCGS60012 Special Assistant to the Commissioner. Effective May 28, 2009.

National Endowment for the Arts

NAGS60077 Director of Communications for the Arts. Effective May 4, 2009.

Department of Housing and Urban Development

DUGS60470 Staff Assistant to the General Counsel. Effective May 1, 2009.
DUGS60171 Congressional Relations Specialist for the Chief of Staff. Effective May 20, 2009.
DUGS60173 Staff Assistant, Housing and Urban Development. Effective May 21, 2009.
DUGS60458 Legislative Specialist for Intergovernmental Relations. Effective May 21, 2009.

Department of Transportation

DTGS60237 Press Secretary of Public Affairs. Effective May 12, 2009.
DTGS60360 Scheduler of Scheduling and Advance. Effective May 15, 2009.
DTGS60199 Special Assistant to the Administrator. Effective May 28, 2009.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–17670 Filed 7–23–09; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–51; Order No. 252]

Global Expedited Package Services Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to include an additional Global Expedited Package Services 1 contract on the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due July 29, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On July 17, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 1 contracts, and is supported by the Governors' Decision filed in Docket No. CP2008–4.[2] Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are functionally equivalent to the initial GEPS 1 contract filed in Docket No. CP2008–5.[3] Notice at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. The Postal Service states that the instant contract replaces the contract for the customer in Docket No. CP2008–19, which will end on September 30, 2009. *Id.* at 2. It submitted the contract and supporting material under seal, and attached a redacted copy of the contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 1 and 2, respectively. *Id.* at 1–2. The term of the instant contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice advances reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service contends that the instant contract is functionally equivalent to the GEPS 1 contracts filed previously. It states that in Governors' Decision No. 08–7, a pricing formula and classification system were established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service contends that the instant contract demonstrates its functional equivalence with the previous GEPS 1 contracts because of several factors: The customers are small or medium-sized businesses that mail directly to foreign destinations using EMI and/or PMI, the contract term of one year applies to all GEPS 1 contracts, the contracts have similar cost and market characteristics, and each requires payment through permit imprint. *Id.* at 4. It asserts that even though prices may be different based on volume or postage commitments made by the customers, or updated costing information, these differences do not affect the contracts' functional equivalency because the GEPS 1 contracts share similar cost attributes and methodology. *Id.* at 4–5.

The Postal Service also identifies several other contractual differences

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, July 16, 2009 (Notice).

[2] *See* Docket No. CP2008–4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contents, May 20, 2008. The docket referenced in the caption should be the docket in which the Governors' Decision is filed. In this instance, that was Docket No. CP2008–4. The contract being suspended was filed in Docket No. CP2008–5.

[3] *See* Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

including provisions that clarify the availability of other Postal Service products and services, exclude certain flat rate products from the mail qualifying for discounts, simplify mailing notice requirements, modify mail tender locations, and clarify the mailer's volume and revenue commitment in the event of early termination.[4] *Id.* at 5–6.

The Postal Service states that these differences related to a particular mailer are ''incidental differences'' and do not change the conclusion that these agreements are functionally equivalent in all substantive aspects. *Id.* at 7.

The Postal Service requests that this contract be included within the GEPS 1 product. *Id.*

The Postal Service maintains that certain portions of the contract and certified statement required by 39 CFR 3015.5(c)(2), names of GEPS 1 customers, related financial information, portions of the certified statement which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

II. Notice of Filing

The Commission establishes Docket No. CP2009–51 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than July 29, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2009–51 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than July 29, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–17701 Filed 7–23–09; 8:45 am]

BILLING CODE 7710–FW–P

[4] The Postal Service indicates that the mailer has satisfied its commitment under the existing contract and seeks to mail under the new contract upon its approval. *Id.* at 6, n.10.

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 22, 2009.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to George Solomon, Supervisor Business Development Officer, Office of Business Initiatives, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: George Solomon, Supervisor Business Development Officer, Office of Business Initiatives, 202–205–7436 *george.solomon@sba.gov*, Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA'S strategic plan is to examine the impact of counseling and information services on nascent, start-up and in-business clients. This survey measure effects on counseling and information transfer on the respondent's evaluation of the effectiveness, usefulness, and relevancy of the services provided and whether these services/actions led to the creation of jobs and an increase in business start-ups and gross revenue.

Title: ''Entrepreneurial Development Impact Study''.

Description of Respondents: SBA Clients.

Form Number: 2214.

Annual Responses: 8,100.

Annual Burden: 1,127.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–17618 Filed 7–23–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 30e–2; SEC File No. 270–437; OMB Control No. 3235–0494.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), (the ''Paperwork Reduction Act'') the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(e)) (the ''Investment Company Act'') and Rule 30e–2 [1] (17 CFR 270.30e–2) thereunder require registered unit investment trusts (''UITs'') that invest substantially all of their assets in securities of a management investment company [2] (''fund'') to send to shareholders at least semi-annually a report containing certain financial statements and other information. Specifically, Rule 30e–2 requires that the report contain the financial statements and other information that Rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1) requires to be included in the report of the underlying fund for the same fiscal period. Rule 30e–1 requires that the underlying fund's report contain, among other things, the financial statements and other information that is required to

[1] Rule 30e–2 was originally adopted as Rule 30d–2, but was redesignated as Rule 30e–2 effective February 15, 2001. See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3734 (Jan. 16, 2001)).

[2] Management investment companies are defined in Section 4 of the Investment Company Act as any investment company other than a face-amount certificate company or a unit investment trust, as those terms are defined in Section 4 of the Investment Company Act. See 15 U.S.C. 80a–4.

be included in such report by the fund's registration form.

The purpose of this requirement is to apprise current shareholders of the operational and financial condition of the UIT. Absent the requirement to disclose all material information in reports, investors would be unable to obtain accurate information upon which to base investment decisions and consumer confidence in the securities industry might be adversely affected. Requiring the submission of these reports to the Commission permits us to verify compliance with securities law requirements. In addition, Rule 30e–2 permits, under certain conditions, delivery of a single shareholder report to investors who share an address (''householding''). Specifically, Rule 30e–2 permits householding of annual and semi-annual reports by UITs to satisfy the delivery requirements of Rule 30e–2 if, in addition to the other conditions set forth in the rule, the UIT has obtained from each applicable investor written or implied consent to the householding of shareholder reports at such address. The rule requires UITs that wish to household shareholder reports with implied consent to send a notice to each applicable investor stating that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, UITs relying on the rule for householding must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke consent are collections of information under the Paperwork Reduction Act. The purpose of the notice and annual explanation requirements associated with the householding provisions of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

The Commission estimates that as of 2009, approximately 820 UITs were subject to the provisions of Rule 30e–2. The Commission further estimates that the annual burden associated with Rule 30e–2 is 121 hours for each UIT, including an estimated 20 hours associated with the notice requirement for householding and an estimated 1 hour associated with the explanation of the right to revoke consent to householding, for a total of 99,220 burden hours.

In addition to the burden hours, the Commission estimates that the cost of contracting for outside services associated with complying with Rule 30e–2 is $20,000 per respondent (80 hours times $250 per hour for independent auditor services), for a total of $16,400,000 ($20,000 per respondent times 820 respondents).

These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under Rule 30e–2 is mandatory. The information provided under Rule 30e–2 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 21, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17769 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60330; File No. SR–FINRA–2009–044]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2262 (Disclosure of Control Relationship With Issuer), 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) in the Consolidated FINRA Rulebook

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as FINRA rules in the Consolidated FINRA Rulebook and to delete NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The proposed rule change would renumber NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, in the Consolidated FINRA Rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as FINRA rules in the Consolidated FINRA Rulebook and to delete NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The proposed rule change would renumber NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, in the Consolidated FINRA Rulebook.

(A) Proposed FINRA Rules 2262 and 2269

(1) Background

Both NASD and NYSE Rules[4] address disclosures or notifications that member firms must provide to customers in connection with certain securities transactions.

NASD Rules 2240 and 2250 set forth requirements that apply to transactions with or for a customer in any market.[5] In short:

• *Disclosure of control relationship:* NASD Rule 2240 provides that a member controlled by, controlling, or under common control with the issuer of any security must, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to the customer the existence of such control; if such disclosure is not made in writing, it must be supplemented by written disclosure at or before the completion of the transaction;[6]

• *Disclosure of participation or interest in distribution:* Rule 2250 provides that if a member is acting as a broker for a customer, or is acting for both the customer and some other person, or is acting as a dealer and receives or has promise of receiving a fee from a customer for advising the customer with respect to securities, then the member must, at or before the completion of any transaction for or with the customer in any security in the primary or secondary distribution of which the member is participating or is otherwise financially interested, give the customer written notification of the existence of such participation or interest.[7]

NYSE Rules 312(f)(2) and 321.24 address disclosures or notifications to customers in somewhat different fashion than NASD Rules 2240 and 2250:

• NYSE Rule 312(f)(2) is similar to NASD Rule 2240, except that Rule 312(f)(2)'s requirement to disclose the control relationship between the issuer and the member is triggered in the context of making a recommendation to a customer. Specifically, Rule 312(f)(2) requires that any member organization that makes any recommendation of any equity or non-investment grade debt security issued by any person controlled by or under common control with such member organization (other than a Material Associated Person[8]) must promptly disclose to the customer the existence and nature of such control at the time of recommendation and, if the disclosure is not made in writing, must provide it in writing prior to the completion of the transaction;[9]

• NYSE Rule 321.24, like NASD Rule 2250, requires disclosure of interest in securities, except that the provisions of Rule 321.24 apply in contexts involving securities underwritten, distributed or sold by a subsidiary of the member. Specifically, Rule 321.24 requires that, in connection with any transactions which the member or member organization may have had with its customers, or any recommendation which the member or member organization may make to its customers, involving securities underwritten, distributed or sold by the subsidiary, full disclosure must be made by the member or member organization to its customers of the interest of the subsidiary in the securities at that time.

(2) Proposal

FINRA proposes to transfer NASD Rules 2240 and 2250 unchanged into the Consolidated FINRA Rulebook. Though the substantive requirements of both rules are duplicated, almost word-for-word, in SEA Rules 15c1–5 and 15c1–6, the two NASD rules provide broad protection to customers because their scope extends to transactions with or for a customer in any market, not just over-the-counter transactions.

[3] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] For convenience, the Incorporated NYSE Rules are referred to as the ''NYSE Rules.''

[5] NASD Rules 2240 and 2250 (formerly designated, respectively, as Sections 13 and 14 of the Rules of Fair Practice) were adopted in 1939 as part of FINRA's original rulebook. *See* Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939). The requirements of NASD Rules 2240 and 2250 duplicate almost word-for-word SEA Rules 15c1–5 (Disclosure of Control) and 15c1–6 (Disclosure of Interest in Distributions), respectively. *See* Securities Exchange Act Release No. 1330 (August 4, 1937) (''Release No. 1330'').

[6] SEA Rule 15c1–5 defines ''manipulative, deceptive, or other fraudulent device or contrivance,'' as used in Section 15(c)(1) of the Exchange Act, to include failure to provide the required disclosure. Section 15(c)(1) provides, in part, that no broker or dealer ''shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security * * * otherwise than on a national securities exchange of which it is a member * * * by means of any manipulative, deceptive, or other fraudulent device or contrivance.'' *See also* Release No. 1330.

[7] Under SEA Rule 15c1–6, like Rule 15c1–5, failure to provide the required notification is a fraudulent act. Rule 15c1–6, like Rule 15c1–5, is limited by the scope of Section 15(c)(1) of the Exchange Act. *See supra* note 6.

[8] The indicia for determining status as a Material Associated Person are set forth in SEA Rule 17h–1T(a)(2). *See* NYSE Rule 312(f)(1).

[9] Note that NYSE Rules 312(f)(1), (f)(2) and (f)(3) were, prior to revisions adopted in 2006, combined together as former Rule 312(f). NYSE Rule 312(f)(1) prohibits member organizations, after completion of a distribution, from effecting any transaction (except on an unsolicited basis) for the account of any customer in the equity or non-investment grade debt of the member organization itself, any parent entity, or any Material Associated Person. Rule 312(f)(3), among other things, requires a member corporation with publicly held securities outstanding to obtain the NYSE's approval to acquire such securities for its own account or the account of any corporation controlling, controlled by or under common control with the member corporation. The rule provides that the NYSE will approve such acquisition unless it determines that such action will impair the financial responsibility or operational capability of the member corporation. For further discussion of NYSE Rule 312(f), *see* NYSE *Information Memo* 06–65 (September 11, 2006).

FINRA proposes to repeal NYSE Rules 312(f)(1) through (f)(3) and 321.24 because the purposes they serve are addressed by proposed FINRA Rules 2262 and 2269, other existing or proposed FINRA rules, and SEC rules. With respect to NYSE Rule 312(f)(1), FINRA notes that making a recommendation or effecting a transaction such as set forth in the rule raises concerns that are within the purview of current anti-manipulation rules (*e.g.,* FINRA Rule 2020 and SEA Rule 10b–5). Further, FINRA notes that customers would be protected by the disclosure that the proposed rules require with respect to the conflicts of interest that the NYSE rule addresses. Moreover, members must comply with FINRA's suitability rule when recommending securities transactions to their customers. With respect to NYSE Rule 312(f)(2), FINRA notes that the proposed FINRA rules would operate to protect customers without regard to whether a member recommends a security to a customer. With respect to NYSE Rule 312(f)(3), FINRA believes that the customer protections provided by the proposed rules and the anti-manipulation rules, in combination, would render the NYSE rule redundant. Further, FINRA maintains a set of rules specifically addressing financial responsibility requirements for members and is separately proposing to adopt consolidated financial responsibility rules.[10] Lastly, with respect to NYSE Rule 321.24, FINRA notes that the disclosure required by the proposed FINRA rules is not limited to situations involving securities underwritten, distributed or sold by a member's subsidiary.

(B) Proposed FINRA Rule 5260

(1) Background

NASD Rule 3340 prohibits members from, directly or indirectly, effecting transactions or publishing quotations or indications of interest (''IOIs'') in (1) any security with respect to which a trading halt is in effect; or (2) any security future when there is a regulatory trading halt in effect with respect to the underlying security.

The trading and quoting conduct prohibited by Rule 3340 is triggered only when a trading halt is in effect. The rule also provides that, in the event that FINRA halts over-the-counter trading and quoting in NMS stocks because the Alternative Display Facility (''ADF'') or a Trade Reporting Facility (''TRF'') is unable to transmit real-time information to the applicable Securities Information Processor, members are not prohibited from trading through other markets for which trading is not halted.

NASD Rule 3340 was originally approved by the SEC in 1988.[11] The rule was subsequently amended in 2001, 2002, 2003 and 2006. The 2001 amendments expressly prohibited members from publishing quotations and IOIs during a trading halt (the rule in its form prior to the 2001 amendments prohibited members from effecting a transaction but did not expressly address quotations and IOIs).[12] The 2002 and 2006 amendments to Rule 3340 provided that, if the ADF or a TRF were unable to transmit real-time information to the applicable Securities Information Processor, members would not be prohibited from trading through other markets for which trading is not halted.[13] The 2003 amendments to the rule added a provision to prohibit member firms, including Alternate Trading Systems (''ATSs''), from trading or publishing quotes or IOIs in any security future when a regulatory trading halt is in effect with respect to the underlying security. Specifically, Rule 3340 was amended to apply to a future for a single security when a regulatory trading halt is in effect for the underlying security or a future on a narrow-based securities index when a regulatory trading halt is in effect for one or more underlying securities that constitute 50% or more of the market capitalization of the index.[14]

In 2002, FINRA published a set of frequently asked questions in response to members' requests for guidance on the application of NASD Rule 3340 to particular scenarios.[15]

(2) Proposal

FINRA believes that Rule 3340 is well understood by its members and has proven effective. Accordingly, FINRA proposes that the rule be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 5260.[16]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will protect investors and the public interest by addressing disclosures or notifications in connection with certain securities transactions and by addressing certain trading and quoting conduct when a trading halt is in effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[10] *See, e.g.,* Securities Exchange Act Release No. 59273 (January 22, 2009), 74 FR 4992 (January 28, 2009) (Notice of Filing File No. SR–FINRA–2008–067).

[11] NASD Rule 3340 was originally adopted as Section 42 of Article III of the Rules of Fair Practice.

[12] *See* Securities Exchange Act Release No. 44390 (June 5, 2001), 66 FR 31262 (June 11, 2001) (Order Approving File No. SR–NASD–2000–33).

[13] *See* Securities Exchange Act Release No.46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (Order Approving File No. SR–NASD–2002–97) (approving the 2002 amendments to NASD Rule 3340); Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR–NASD–2005–087) (approving the 2006 amendments to NASD Rule 3340).

[14] *See* Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003) (Order Approving File No. SR–NASD–2001–047).

[15] *See* NASD *Notice to Members* 02–82 (December 2002) (Frequently Asked Questions Relating to Trading Halts).

[16] On December 30, 2008, FINRA filed with the SEC a proposed rule change to amend NASD Rule 3340 to create a limited exception to permit members to route unsolicited customer orders for execution outside the United States while a trading halt is in effect in the United States. *See* SR–FINRA–2008–069. Assuming Commission approval of this proposed rule change prior to Commission approval of SR–FINRA–2008–069, FINRA will amend SR–FINRA–2008–069, as necessary, to reflect such approval. Similarly, in the event the Commission approves SR–FINRA–2008–069 prior to approval of this proposed rule change, FINRA will amend this proposed rule change, as necessary, to reflect such approval.

[17] 15 U.S.C. 78*o*–3(b)(6).

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–044 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–044. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–044 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17633 Filed 7–23–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60335; File No. SR–NASDAQ–2009–066]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Processing of Orders on the NASDAQ Options Market

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2009, The NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter VI, Section 10 of the NASDAQ Options Market (''NOM'' or ''Exchange'') to allow marketable orders to be exposed to market participants for a brief period of time before routing to an away market center for execution at the National Best Bid/Offer (''NBBO'') or cancelling the order. The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.[3]

* * * * *

Chapter VI Trading Systems

Sec. 1 Definitions

The following definitions apply to Chapter VI for the trading of options listed on NOM.

(a)–(d) No change.

(e) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(7) No Change.

(8) ''Additional Exposure Orders'' are orders that are priced at the National Best Offer, for buys, and the National Best Bid, for sells. The order is exposed on the System Book Feed for a time determined by the Exchange, not to exceed one second. At the end of the exposure period, if still unexecuted, the order will be routed to the market(s) at the NBBO, cancelled back to the entering party, or posted on the book pursuant to Section 7 of Chapter VI.

Any update to the NBBO that improves the exposed order price will cause an immediate end to the exposure period. Any unexecuted portion of the order will be routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the book pursuant to Section 7 of Chapter VI.

Any update to the NBBO that unlocks the exposed order price will cause an immediate end to the exposure period. Any unexecuted portion of the order will be executed against contra interest on the book, routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the book pursuant to Section 7 of Chapter VI.

* * * * *

Sec. 6 Acceptance of Quotes and Orders

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate limit price and whether they are a call or put and buy or sell. Systems Orders can be designated as Immediate or Cancel (''IOC''), Good-till-Cancelled (''GTC''), Day (''DAY''), WAIT or Expire Time (''EXPR'').

(2) A System order may also be designated as a Reserve Order, a Limit Order, a Minimum Quantity Order, a Discretionary Order, a Market Order, a Price Improving Order, [or] an Exchange

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

Direct Order, *or an Additional Exposure Order.*

* * * * *

Sec. 11 Order Routing

(a) For System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close, and shall route orders as follows. Participants can designate orders as either available for routing or not available for routing. Orders designated as not available for routing shall follow the book processing rules set forth in Section 10 above. Orders designated as available for routing, will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center. *Orders designated as Additional Exposure Orders, as defined in Chapter VI, Section 1, will be exposed on the System Book Feed prior to routing to other markets.* If contracts remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to change the NOM rules in order to provide marketable orders an additional opportunity for execution on the NOM when NOM is not part of the NBBO. Currently, if an order that is marketable against the NBBO is received, it is matched against any possible contra side orders available in the Trading System. If the order is still unexecuted, or if only partially unexecuted, the order is then routed away to the market or markets at the NBBO, cancelled back to the entering party or posted on the NOM Book and displayed at a non-locking price according to the instructions on the order.

The proposed rule change will provide for the NOM System to expose the order, at the NBBO price, to subscribers of a data feed for System securities (''System Book Feed''), for a brief period of time (the ''exposure period'') not to exceed one second. All Members have the opportunity to respond to any order exposed or displayed on the System Book Feed.

Participants may designate orders to be Additional Exposure Orders using a notation on the order message submitted to the Exchange. Additional Exposure Orders will be exposed at a price equal to the National Best Offer, if a buy, or the National Best Bid, if a sell. During the exposure period, the Additional Exposure Order will be treated as a Limit Order (as defined in Chapter VI, Section 1(e)(2)) for book processing purposes. Specifically, during the exposure period, orders and quotes that are equal to the NBBO and on the opposite side of the market will be matched against the exposed order and immediately executed as they are received. Orders and quotes that are better than the NBBO and on the opposite side of the market will also be matched against the exposed order, and immediately executed as they are received at the price of the exposed order as per Chapter VI, Section 10(1) and (3) of the NOM rules. If the order is still unexecuted, or if only partially unexecuted, it will be routed to the market(s) at the NBBO, cancelled back to the entering party or posted on the NOM Book and displayed at a non-locking price as per the instructions of the order.

Any update to the NBBO during the exposure period that unlocks the exposed order will cause the exposure period to terminate, and any unexecuted portion of the order will either be (i) executed against contra interest on the NOM book; (ii) immediately routed to the new NBBO market(s); (iii) cancelled if the order is marked as a Do Not Route order and there is no contra interest available; or (iv) the order will be posted on the NOM book for possible display and/or execution pursuant to Section 7 of Chapter VI if the order is marked as a Do Not Route order and has a Time In Force other than IOC.

Conversely, an update to the NBBO that crosses the exposed price will also bring the exposure period to an immediate end, and any unexecuted portion of the order will either be routed away, cancelled or posted on the NOM book pursuant to Section 7 of Chapter VI.[4]

Example 1

NOM market 3.00–3.30.
CBOE market (NBBO) 3.00–3.20.
NOM receives an order to Buy paying 3.30. The order is exposed for one second at a price of 3.20 prior to routing to CBOE.
200 milliseconds after the start of the exposure, CBOE offer moves to 3.30. The exposure period terminates, and the order is executed against the NOM 3.30 offer, and if not fully executed, routed to the CBOE offer at 3.30, cancelled or posted on the NOM book depending on the instructions on the order.

Example 2

NOM 3.00–3.30.
CBOE market (NBBO) 3.00–3.20.
NOM receives an order to Buy paying 3.30. The order is exposed for one second prior to routing to CBOE.
200 milliseconds after the start of the exposure period, ISE posts an offer at 3.10. Again, the exposure period terminates, and if the order is designated for routing, the order is immediately routed to the ISE to trade against the 3.10 offer, otherwise the order is cancelled or posted in accordance with Chapter VI, Section 7(b)(3)(C) (''Trade-Through Compliance and Locked or Crossed Markets'').

NOM Users who do not wish to have an order exposed have the ability to designate their order accordingly, in which case the order will be executed against contra interest on the NOM book, immediately routed to other markets at the NBBO, posted on the NOM book at a non-locking price in accordance with Chapter VI, Section 7(b)(3)(C) or cancelled depending on the instructions on the order. Users who wish to avoid both exposure and routing may do so by using an order designation that indicates to the Exchange that the order should not be exposed and marking the order as Do Not Route.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[4] For example, with regard to posting on the NOM book, if the order was a non-routable order and CBOE's offer (see Example 1) updated to 3.10, the exposure period would terminate, and the non-routable order would then be posted on the NOM book at a price of 3.10 and displayed at 3.05.

of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that it will provide greater opportunities for investors to receive executions on the NOM System so as to enhance the efficiency of order handling, and also provides Users the opportunity to match prices at other markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange asserts that waiver of the operative delay is appropriate in order to allow the Exchange to remain competitive with other options exchanges, which have a substantially similar functionality to that being proposed.[11] On this basis, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates that the proposed rule change become operative immediately.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–066. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–066 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17636 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Item 7 of SR–NASDAQ–2009–066. *See e.g.,* Boston Options Exchange Rules Chapter V, Sec. 16(b)(iii), Chicago Board Options Exchange Rule 6.14, and NYSE Arca Rule 6.76A.

[12] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60333; File No. SR–ISE–2009–52]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2009, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The ISE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend two pilot programs related to its Price Improvement Mechanism (''PIM''). The text of the proposed rule amendment is as follows, with proposed deletions in [brackets], and proposed additions in italics:

Rule 723. Price Improvement Mechanism for Crossing Transactions

* * * * *

Supplementary Material to Rule 723

.01–.02 No Change.

.03 Initially, and for at least a Pilot Period expiring on *July 17, 2010* [July 18, 2009], there will be no minimum size requirements for orders to be eligible for the Price Improvement Mechanism. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the Price Improvement Mechanism, that there is significant price improvement for all orders executed through the Price Improvement Mechanism, and that there is an active and liquid market functioning on the Exchange outside of the Price Improvement Mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04 No Change.

.05 Paragraphs (c)(5), (d)(5) and (d)(6) will be effective for a Pilot Period expiring on *July 17, 2010* [July 18, 2009]. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

.06–.07 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently has two pilot programs related to its PIM.[5] The current pilot period provided in paragraphs .03 and .05 of the Supplementary Material to Rule 723 is set to expire on July 18, 2009.[6] Paragraph .03 provides that there is no minimum size requirement for orders to be eligible for the Price Improvement Mechanism. Paragraph .05 concerns the termination of the exposure period by unrelated orders. In accordance with the Approval Order, the Exchange has continually submitted certain data in support of extending the current pilot programs. The Exchange proposes to extend these pilot programs in their present form, through July 17, 2010, to give the Exchange and the Commission additional time to evaluate the effects of these pilot programs before requesting permanent approval of the rules. To aid the Commission in its evaluation of the PIM Functionality, ISE will also continue to provide additional PIM-related data as requested by the Commission.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Since the Price Improvement Mechanism has been operating for a relatively short period of time, the Exchange believes it is appropriate to extend the pilot periods to provide the Exchange and Commission more data upon which to evaluate the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [7] of the Act and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Approving the PIM Pilot (the ''Approval Order'')); 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension for the Price Improvement Mechanism); 54146 (July 14, 2006), 71 FR 41490 (July 21, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension Until July 18, 2007 for the Price Improvement Mechanism); 56106 (July 19, 2007), 72 FR 40914 (July 25, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Week Extension for the Price Improvement Mechanism Pilot Program); and 56156 (July 27, 2007), 72 FR 43305 (August 3, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension for the Price Improvement Mechanism Pilot Program).

[6] *See* Securities Exchange Act Release No. 58197 (July 18, 2008), 73 FR 43810 (July 28, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[9] *Id.*

4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] which would make the rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot periods to continue without interruption.[12] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–52 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17634 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60322; File No. SR–NYSEArca–2009–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing the Schedule of Fees and Charges for Exchange Services

July 16, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 10, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) [4] of the Act and Rule 19b–4(f)(2) [5] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on July 13, 2009. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 30, 2009 the Exchange filed with the Commission a rule change adding four new Self Trade Prevention (''STP'') Modifiers.[6] The new STP functionality allows Equity Trading Permit (''ETP'') Holders entering orders into the system to elect to prevent those orders from executing against other orders entered into the System by the same ETP Holder. Pursuant to this proposal the Exchange seeks to add to the Schedule a credit and fee for orders returned to an ETP Holder using the STP Modifiers.

ETP Holders entering an incoming order with either the STP Cancel Both (''STPC'') or the STP Decrement and Cancel (''STPD'') Modifier will be charged $0.0030 per share for orders

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] See Securities and Exchange Act Release No. 60191 (June 30, 2009), 74 FR 32660 (July 8, 2009)(Notice of Filing and Immediate Effectiveness for NYSEArca–2009–58).

returned to the ETP Holder. The ETP Holders [sic] corresponding resting order marked with any of the STP Modifiers that interacts with an incoming STPC or STPD Modifier will be credited $0.0029 per share for orders returned to the ETP Holder. ETP Holders entering an incoming order with either the STP Cancel Newest (''STPN'') or the STP Cancel Oldest (''STPO'') Modifier will not be credited or charged any fees. Similar to the way in which STP Modifiers interact, the incoming order with an STP Modifier controls the fees charged.

Example 1:

—A STPN (or STPO) Order is entered by an ETP Holder and is resting in the NYSE Arca Book.
—A STPC (or STPD) Order is subsequently entered by the same ETP Holder and is marketable against the STPN (or STPO) Order.
—The ETP Holder is credited $0.0029 per share for the resting STP Order and charged $0.0030 per share for the incoming STPC (or STPD) Order.

Example 2:

—A STPC (or STPD) Order is entered by an ETP Holder and is resting in the NYSE Arca Book [sic].
—A STPN (or STPO) Order is subsequently entered by the same ETP Holder and is marketable against the STPC (or STPD) Order.
—The ETP Holder is not credited or charged a fee for either order returned back to the ETP Holder.

On incoming orders marked with the STPD Modifier, both orders will be cancelled back to the ETP Holder if the orders are equivalent in size. If the orders are not equivalent in size, the equivalent size will be cancelled back to the ETP Holder and the larger order will be decremented by the size of the smaller order with the balance remaining on the NYSE Arca Book. For billing purposes, only the size of the portion of the orders cancelled back to the ETP Holder will be charged or credited. For example, if an incoming 1000 share STPD Order interacts with a resting 200 share STP Order from the same ETP ID, the ETP Holder will be credited and charged for the 200 shares that were cancelled back.

On incoming orders marked with the STPC Modifier, the entire size of both orders will be cancelled back to ETP Holder. However, for billing purposes, incoming orders marked with the STPC Modifier will only be charged or credited up to the equivalent size of both orders. For example, if an incoming 200 share STPC Order interacts with a resting 1000 share STP Order, the ETP Holder will only be charged and credited for the equivalent size, which is 200 shares. Similarly, if an incoming 1000 share STPC Order interacts with a 200 share resting STP Order, the ETP Holder will only be charged and credited for 200 shares.

The Exchange plans to implement these new fees and credits in conjunction with the implementation of this STP functionality scheduled for July 13, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–68 and should be submitted on or before August 14, 2009.

[7] 15 U.S.C. 78f(b).
[8] 15 U.S.C. 78f(b)(4).
[9] 15 U.S.C. 78s(b)(3)(A).
[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17632 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60321; File No. SR–NYSEArca–2009–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(mm)

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 8, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(mm) governing the PNP (Post No Preference) Blind orders. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to amend the definition and operation of PNP Blind orders under NYSE Arca Equities Rule 7.31(mm). A PNP Blind order is a PNP Order[3] priced at or through the Best Protected Bid or Best Protected Offer (''PBBO'') that is displayed on the NYSE Arca Book[4] at the price of the contra quote. The priority and execution of PNP Blind orders are governed by the Exchange's Display Order Process set forth in Rule 7.36. Presently, pursuant to 7.31(mm)(4), marketable contra orders execute first against PNP Blind orders, then the rest of the book. Pursuant to this proposal, the Exchange seeks to clarify that where a PNP Blind order is un-displayed, any displayed order priced at or through the PBBO will take priority over the un-displayed PNP Blind order at the same prices. Of course, once a PNP Blind order is displayed, it will be ranked in price/time priority with all other orders.

Example

10:03:00 PBBO: $15.00 to $15.05
10:03:30 B1 PNPB Buy 1000 at 15.10 (order is booked at $15.05, un-displayed)
10:03:45 B2 PNP ISO Buy 1000 at $15.05 (order is immediately posted)
10:04:00 S1 Sell 1000 at $15.05

Results Currently: S1 interacts with un-displayed order B1

Revised Results: S1 trades with displayed order B2.

The Exchange believes that amending this functionality is consistent with its Display Order Process which favors executing displayed liquidity before un-displayed liquidity.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Exchange Act''), in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change clarifies PNP Blind order functionality consistent with its Display Order Process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rule 7.31(w).

[4] NYSE Arca Equities Rule 1.1(a). The term ''NYSE Arca Book'' shall refer to the NYSE Arca Marketplace's electronic file of orders, which contains all the User's orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has complied with this requirement.

[10] *Id.*

Commission believes such waiver is consistent with the protection of investors and the public interest.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–65 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17631 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60318; File No. SR–NYSE–2009–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 2 To Redefine the Term ''Member Organization''

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on June 30, 2009, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 2 to redefine the term ''member organization.'' The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to broaden the definition of a ''member organization'' to include a registered broker or dealer that is not a member of the Financial Industry Regulatory Authority (''FINRA'') so long as the broker or dealer is a member of another registered securities exchange. However, member organizations that transact business with public customers or conduct business on the Floor of the Exchange must at all times be members of FINRA. The revised definition as proposed is consistent with the rules of other national securities exchanges that have been approved by the Commission.

Under current NYSE Rule 2(b)(i), a registered broker or dealer must be a member of FINRA in order to qualify as a ''member organization'' of the Exchange and to be eligible for an NYSE trading license. Under this arrangement, FINRA is the DEA for all NYSE member organizations. Similarly, NYSE Rule 2(b)(ii) provides that a registered broker or dealer can become a member organization, even though it does not own an NYSE trading license, if it agrees to be regulated as such by the Exchange, but only if it is a member of FINRA. The Exchange proposes to make membership more broadly available to other registered brokers or dealers who are not FINRA members but who are members of another registered securities exchange and do not transact business with public customers or conduct business on the Floor of the Exchange. The Exchange believes that this change can be made without any sacrifice of regulatory rigor.

Under the proposed rule change, those NYSE member organizations that are also members of FINRA will continue to be regulated pursuant to the terms of the existing allocation plan pursuant to Rule 17d–2 of the Act among FINRA, NYSE, and NYSE Regulation, Inc. (''NYSE Regulation''), and FINRA will continue to be the DEA for these member organizations. For those NYSE member organizations that are not members of FINRA, but are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

members of another registered securities exchange, NYSE Regulation will provide for the exercise of certain of its regulatory responsibilities with respect to these member organizations pursuant to an amendment to an existing regulatory services agreement among NYSE, NYSE Regulation, and FINRA.[3]

The Exchange believes that the proposed rule change is consistent with the rules of other registered national securities exchanges that have previously been approved by the Commission. For example, the rules of BATS Exchange, Inc. (''BATS'') provide that ''any registered broker or dealer which is a member of another registered national securities exchange or association or any person associated with such a registered broker or dealer shall be eligible'' to be a member of that exchange.[4] Stated otherwise, to be eligible for BATS membership, a firm must be a member of either FINRA or another registered national securities exchange. Similarly, the rules of National Stock Exchange, Inc. (''NSX'') contain no requirement for FINRA membership in its eligibility requirements and restrictions applicable to a registered broker or dealer that seeks to become an ETP Holder on that Exchange.[5]

Finally, the rules of The NASDAQ Stock Market LLC (''Nasdaq'') provide for membership in Nasdaq of a registered broker or dealer that is either a member of FINRA or a member of another registered securities exchange, with the additional requirement (also being proposed herein by the Exchange) that ''Nasdaq members that transact business with customers shall at all times be members of FINRA.'' [6] The term ''customers'' in the foregoing sentence refers to public customers and does not include brokers or dealers.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [8] of the Act, in general, and furthers the objectives of Section 6(b)(5) [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the NYSE believes that, by (i) expanding the number of registered brokers and dealers that are eligible to become NYSE member organizations and trade on the Exchange, while maintaining high regulatory standards with respect to such firms, and (ii) aligning NYSE membership requirements more closely with those of other registered securities exchanges, the proposed rule change will contribute to perfecting the mechanism of a free and open market and a national market system, which outcomes are also consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may expand the number of registered brokers and dealers that are eligible to become NYSE member organizations and trade on the Exchange without delay. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to extend Exchange membership to registered broker-dealers that are members of other exchanges in a manner that is consistent with the rules of other exchanges, which previously were approved by the Commission.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*;) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–63 on the subject line.

[3] Because the new class of member organization proposed in this rule filing would not be FINRA members, they would not be covered under an existing allocation plan among NYSE, NYSE Regulation, and NASD (k/n/a FINRA) pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, as amended (the ''17d–2 Agreement''). *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). Accordingly, pursuant to an amendment to an existing regulatory services agreement, NYSE Regulation will retain FINRA to provide regulatory services for certain NYSE rules defined as ''Common Rules'' under the 17d–2 Agreement for any NYSE member organization that is not a FINRA member, starting from the effective date of this filing.

[4] *See* BATS Rule 2.3.

[5] *See* NSX Rules 2.3 and 2.4.

[6] *See* Nasdaq Rule 1002(e). *See also* Nasdaq Rule 1014(a)(3).

[7] *See* Nasdaq Rule 0120(g).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *See, e.g.,* Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (order approving rules of BATs Exchange); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving rules of the Nasdaq Stock Market LLC).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–63 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17630 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60317; File No. SR–NYSEAmex–2009–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 2 To Redefine the Term ''Member Organization''

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on June 30, 2009, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 2 to redefine the term ''member organization.'' The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to broaden the definition of a ''member organization'' to include a registered broker or dealer that is not a member of the Financial Industry Regulatory Authority (''FINRA'') so long as the broker or dealer is a member of another registered securities exchange. However, member organizations that transact business with public customers or conduct business on the Floor of the Exchange must at all times be members of FINRA. The revised definition as proposed is consistent with the rules of other national securities exchanges that have been approved by the Commission.[3]

Under current NYSE Amex Equities Rule 2(b)(i), a registered broker or dealer must be a member of FINRA in order to qualify as a ''member organization'' of the Exchange and to be eligible for an NYSE Amex equities trading license. Under this arrangement, FINRA is the DEA for all NYSE Amex equities member organizations. Similarly, NYSE Amex Equities Rule 2(b)(ii) provides that a registered broker or dealer can become a member organization, even though it does not own an NYSE Amex equities trading license, if it agrees to be regulated as such by the Exchange, but only if it is a member of FINRA. The Exchange proposes to make membership more broadly available to other registered brokers or dealers who are not FINRA members but who are members of another registered securities exchange and do not transact business with public customers or conduct business on the Floor of the Exchange. The Exchange believes that this change can be made without any sacrifice of regulatory rigor.

Under the proposed rule change, those NYSE Amex equities member organizations that are also members of FINRA will be regulated pursuant to the terms of an allocation plan pursuant to Rule 17d–2 of the Act among FINRA, New York Stock Exchange LLC (''NYSE''), NYSE Amex, and NYSE Regulation, Inc. (''NYSE Regulation''),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As part of the relocation of NYSE Amex equities trading to trading systems and facilities located at 11 Wall Street, New York, New York, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems. The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the New York Stock Exchange LLC (''NYSE''). *See* Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR–Amex–2008–63); 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR–NYSE–2008–106); 58839 (Oct. 23, 2008), 73 FR 64645 (Oct. 30, 2008) (SR–NYSEALTR–2008–03); 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10); and 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR–NYSEALTR–2008–11). The Exchange is filing this rule proposal as a companion filing to a rule proposal filed by the NYSE. *See* SR–NYSE–2009–63.

and FINRA will continue to be the DEA for these member organizations. For those NYSE Amex equities member organizations that are not members of FINRA, but are members of another registered securities exchange, NYSE Regulation will provide for the exercise of certain of its regulatory responsibilities with respect to these member organizations pursuant to an existing regulatory services agreement among NYSE, NYSE Amex, NYSE Regulation, and FINRA.

The Exchange believes that the proposed rule change is consistent with the rules of other registered national securities exchanges that have previously been approved by the Commission. For example, the rules of BATS Exchange, Inc. (''BATS'') provide that ''any registered broker or dealer which is a member of another registered national securities exchange or association or any person associated with such a registered broker or dealer shall be eligible'' to be a member of that exchange.[4] Stated otherwise, to be eligible for BATS membership, a firm must be a member of either FINRA or another registered national securities exchange. Similarly, the rules of National Stock Exchange, Inc. (''NSX'') contain no requirement for FINRA membership in its eligibility requirements and restrictions applicable to a registered broker or dealer that seeks to become an ETP Holder on that Exchange.[5]

Finally, the rules of The NASDAQ Stock Market LLC (''Nasdaq'') provide for membership in Nasdaq of a registered broker or dealer that is either a member of FINRA or a member of another registered securities exchange, with the additional requirement (also being proposed herein by the Exchange) that ''Nasdaq members that transact business with customers shall at all times be members of FINRA.'' [6] The term ''customers'' in the foregoing sentence refers to public customers and does not include brokers or dealers.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [8] of the Act, in general, and furthers the objectives of Section 6(b)(5) [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that, by (i) expanding the number of registered brokers and dealers that are eligible to become NYSE Amex equities member organizations and trade on the Exchange, while maintaining high regulatory standards with respect to such firms, and (ii) aligning NYSE Amex equities membership requirements more closely with those of other registered securities exchanges, the proposed rule change will contribute to perfecting the mechanism of a free and open market and a national market system, which outcomes are also consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may expand the number of registered brokers and dealers that are eligible to become NYSE Amex member organizations and trade on the Exchange without delay. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to extend Exchange membership to registered broker-dealers that are members of other exchanges in a manner that is consistent with the rules of other exchanges, which previously were approved by the Commission.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[4] *See* BATS Rule 2.3.

[5] *See* NSX Rules 2.3 and 2.4.

[6] *See* Nasdaq Rule 1002(e). *See also* Nasdaq Rule 1014(a)(3).

[7] *See* Nasdaq Rule 0120(g).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *See, e.g.,* Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (order approving rules of BATs Exchange); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving rules of the Nasdaq Stock Market LLC).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–36 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17629 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60316; File No. SR–CBOE–2009–050]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Immediately Add New FAZ and FAS Option Series Within Five Days of Expiration

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is seeking to immediately list new option series on Direxion Daily Financial Bear 3X Shares (''FAZ'') and on Direxion Daily Financial Bull 3X Shares (''FAS'') that expire this Friday, July 17, 2009, notwithstanding Interpretation and Policy .04 to Rule 5.5, *Series of Option Contracts Open for Trading.* The Exchange is not proposing any rule text changes. The Exchange is not proposing any rule text changes.[sic] Although the proposed rule change would not amend the text of Rule 5.5.04, the proposed change would have the effect of permitting the Exchange to immediately add new series of FAZ and FAS options within five business days prior to expiration on Friday, July 17, 2009.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to allow the Exchange to immediately list new option series on FAZ and FAS that expire this Friday, July 17, 2009, notwithstanding Interpretation and Policy .04 to Rule 5.5, *Series of Option Contracts Open for Trading.* CBOE Rule 5.5.04 permits the Exchange to list new series of options until the beginning of the month in which the option contract will expire. Due to unusual market conditions, CBOE, in its discretion, may add new series of options until five business days prior to expiration.

On July 14, 2009, NASDAQ OMX PHLX listed additional series on FAZ that expire on July 17, 2009, and on July 15, 2009, NASDAQ OMX PHLX listed additional series on FAS that expire on July 17, 2009. Specifically, NASDAQ OMX PHLX listed July 2009 options on FAZ with the following strikes: 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44, and NASDAQ OMX PHLX listed July 2009 options on FAS with the following strikes: 25, 26, 27 and 28. NASDAQ OMX PHLX does not have restrictions pertaining to the timing of adding new series. *See* NASDAQ OMX PHLX Rules 1012, *Series of Options Open for Trading,* and 1101A, *Terms of Option Contracts.* However, under CBOE's existing rules, the Exchange is not permitted to add these same series. As a result, the Exchange has submitted this current filing seeking to immediately list the same series listed by NASDAQ OMX PHLX on July 14 and 15, 2009. To the extent any additional series are added by NASDAQ OMX PHLX between the time this filing is submitted and Friday, July 17, 2009, the Exchange similarly seeks to immediately list such same series.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[5] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes adding the new FAZ and FAS series will foster competition and benefit investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(1).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

CBOE has requested that the Commission waive the 30-day operative delay period. The Commission has determined that waiving the 30-day operative delay of the CBOE's proposal is consistent with the protection of investors and in the public interest in that it will allow CBOE to immediately add options series that another options exchange currently lists and trades, which should promote competition.[10] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–050 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17628 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60334; File No. SR–ISE–2009–47]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule change is to charge the same execution fees for all customer orders, i.e., for all orders that are not for the account of a broker-dealer. Currently, there are two sub-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

categories of customer orders for which the Exchange charges broker-dealer execution fees: Voluntary Professional orders; [3] and Professional Orders.[4] Each of these order categories is also treated the same as broker-dealer orders for the purposes of specified Exchange execution priority rules. The ISE currently is the only market center that has these order categories for non-broker-dealer orders, and charging broker-dealer execution fees makes it more costly to execute these orders on the ISE as compared to the other options exchanges. Therefore, in order to remain competitive, the Exchange proposes to amend its fee schedule [5] and rules [6] so that all non-broker-dealer orders are subject to the same execution fee. This fee change will effectively result in a fee decrease for the execution of these orders.[7]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposed rule change would lower fees for the execution of Voluntary Professional orders and Professional Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE–2009–47 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17635 Filed 7–23–09; 8:45 am]

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[3] Voluntary Professional orders are orders for a customer that has elected to be treated in the same manner as a broker-dealer in securities for purposes of specified execution priority rules and with respect to the ISE fee schedule. ISE Rule 100(a)(37A).

[4] Earlier this year the SEC approved an ISE rule change to distinguish between priority customers and professional customers for purposes of specified execution priority rules and with respect to the ISE fee schedule. Securities Exchange Act Release No. 59287 (Jan. 23, 2009), 74 FR 5694 (Jan. 30, 2009) (''Professional Order Filing''). Professional Orders are orders for the account of a non-broker-dealer that enters more than 390 orders per day on average during a month during a calendar quarter. To assure member firms are given sufficient time to implement any necessary systems changes, this rule change is being implemented in two stages: (1) Members are required to start measuring the number of orders their customers enter on average per day during the third quarter 2009; and (2) members are required to start identifying professional customer orders entered on the ISE at the beginning of the fourth quarter 2009.

[5] The Exchange adopted definitional changes to its fee schedule that resulted in Professional Orders being charged the same fees as broker-dealer orders. However, because the rule change is being phased-in, and to avoid confusion in the interim, the ISE fee schedule posted on the Exchange's Web site does not yet reflect these definitional changes.

[6] The imposition of broker-dealer fees is imbedded in the definition of a Voluntary Professional rather than being separately identified on the ISE fee schedule. Therefore, the Exchange proposes to modify the definition of Voluntary Professional in order to accomplish the fee change.

[7] The Exchange notes that Voluntary Professional orders and Professional Orders currently are not subject to the Exchange's cancellation fee. The Exchange is not proposing to change this aspect of the fee schedule. Such orders will not be subject to the cancellation fee.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60338; File No. SR–CBOE–2009–051]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs Related to the Exchange's Automated Improvement Mechanism

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend two pilot programs related to the Exchange's Automated Improvement Mechanism. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In February, 2006, CBOE obtained approval of a filing adopting the AIM auction process.[5] AIM exposes certain orders electronically to an auction process to provide such orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that an Exchange member represents as agent and for which a second order of the same size as the ''Agency Order'' (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

Two components of AIM were approved on a pilot basis: (1) that there is no minimum size requirement for orders to be eligible for the auction, and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Rule 6.45A(d).[6] In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data. In July 2006, the Exchange extended the pilot program until July 18, 2007.[7] In July 2007, the Exchange extended the pilot program until July 18, 2008.[8] In July 2008, the Exchange extended the pilot program until July 18, 2009.[9] The proposed rule change merely extends the duration of the pilot programs until July 17, 2010. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general [10] and furthers the objectives of Section 6(b)(5) [11] in particular in that by allowing the Commission additional time to evaluate the AIM pilot programs, it should serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [12] of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, which would make the rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the AIM pilot programs to continue without interruption.[14] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) approving SR–CBOE–2005–60.

[6] That rule relates to situations where a Market-Maker's quote interacts with the quote of another CBOE Market-Maker (*i.e.* when internal quotes lock).

[7] *See* Securities Exchange Act Release No. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) approving SR–CBOE–2006–64.

[8] *See* Securities Exchange Act Release No. 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) approving SR–CBOE–2007–80.

[9] *See* Securities Exchange Act Release No. 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) approving SR–CBOE–2008–76. In this filing, the Exchange agreed to provide additional information relating to the AIM auctions each month in order to aid the Commission in its evaluation of the pilot program. The Exchange will continue to provide this information.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78(f)(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intention to file the proposed rule change along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–051. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–051 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17638 Filed 7–23–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60337; File No. SR–BX–2009–038]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Allows for No Minimum Size Order Requirement for the Price Improvement Period Process on the Boston Options Exchange Facility

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2009 NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Supplementary Material to Section 18 (the Price Improvement Period ''PIP'') of Chapter V of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to extend a pilot program that permits BOX to have no minimum size requirement for orders entered into the PIP and under certain circumstances permits the premature termination of the PIP process (''PIP Pilot Program''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the PIP Pilot Program under the BOX Rules for twelve (12) additional months. The PIP Pilot Program allows BOX to have no minimum size requirement for orders entered into the PIP process and under certain circumstances permits the premature termination of the PIP process.[5] The proposed rule change reflects change to the text of Supplementary Material .01 to Section 18 of Chapter V of the BOX Rules and seeks to extend the operation of the PIP Pilot Program until July 17, 2010.

The Exchange notes that the PIP Pilot Program provides small customer orders with benefits not available under the rules of some other exchanges. One of the important factors of the PIP Pilot Program is that it guarantees Participants the right to trade with their customer orders that are less than 50 contracts. In particular, any order

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Pilot Program is currently set to expire on July 18, 2009. *See* Securities Exchange Act Release No. 58942 (November 13, 2008), 73 FR 70394 (November 20, 2008) (SR–BSE–2008–49); *See also* Securities and Exchange Act Release No. 58195 (July 18, 2008), 73 FR 43801 (July 28, 2008) (SR–BSE–2008–39); *See also* Securities Exchange Act Release No. 55999 (July 2, 2007), 72 FR 37549 (July 10, 2007) (SR–BSE–2007–27); *See also* Securities Exchange Act Release No. 54066 (June 29, 2006), 71 FR 38434 (July 6, 2006) (SR–BSE–2006–24); *See also* Securities Exchange Act Release No. 52149 (July 28, 2005), 70 FR 44704 (August 3, 2005) (SR–BSE–2005–22); *See also* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (''Original PIP Pilot Program Approval Order''). *See also* Securities Exchange Act Release No. 51821 (June 10, 2005), 70 FR 35143 (June 16, 2005) (SR–BSE–2004–51) (Order approving, among other things, under certain circumstances, the premature termination of a PIP process).

entered into the PIP is guaranteed an execution at the end of the auction at a price at least equal to the national best bid or offer.

In further support of this proposed rule change, and as required by the Original PIP Pilot Program Approval Order, the Exchange represents that BOX has been submitting to the Exchange and to the Commission a PIP Pilot Program Report, offering detailed data from, and analysis of, the PIP Pilot Program. Although BOX is submitting the reports, the Exchange notes that it is also responsible for the timeliness and the accuracy of the information.

To aid the Commission in its evaluation of the PIP Pilot Program, BOX has represented to the Exchange that BOX will provide the following additional information each month: (1) The number of orders of 50 contracts or greater entered into the PIP auction; (2) The percentage of all orders of 50 contracts or greater sent to BOX that are entered into BOX's PIP auction; (3) The spread in the option, at the time an order of 50 contracts or greater is submitted to the PIP auction; (4) Of PIP trades for orders of fewer than 50 contracts, the percentage done at the National Best Bid or Offer (''NBBO'') plus $.01, plus $.02, plus $.03, etc.; (5) Of PIP trades for orders of 50 contracts or greater, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.; (6) The number of orders submitted by Order Flow Providers (''OFPs'') when the spread was $.05, $.10, $.15, etc. For each spread, BOX will specify the percentage of contracts in orders of fewer than 50 contracts submitted to BOX's PIP that were traded by: (a) The OFP that submitted the order to the PIP; (b) BOX Market Makers assigned to the class; (c) other BOX Participants; (d) Public Customer Orders (including Customer PIP Orders (''CPOs'')); and (e) unrelated orders (orders in standard increments entered during the PIP). For each spread, BOX will also specify the percentage of contracts in orders of 50 contracts or greater submitted to BOX's PIP that were traded by: (a) The OFP that submitted the order to the PIP; (b) BOX Market Makers assigned to the class; (c) other BOX Participants; (d) Public Customer Orders (including CPOs); and (e) unrelated orders (orders in standard increments entered during PIP); (7) For the first Wednesday of each month: (a) The total number of PIP auctions on that date; (b) the number of PIP auctions where the order submitted to the PIP was fewer than 50 contracts; (c) the number of PIP auctions where the order submitted to the PIP was 50 contracts or greater; (d) the number of PIP auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIP auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.; and (8) For the third Wednesday of each month: (a) The total number of PIP auctions on that date; (b) the number of PIP auctions where the order submitted to the PIP was fewer than 50 contracts; (c) the number of PIP auctions where the order submitted to the PIP was 50 contracts or greater; (d) the number of PIP auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIP auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the PIP Pilot Program for an additional twelve (12) months. The Exchange represents that the Pilot Program is designed to provide investors with real and significant price improvement regardless of the size of the order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the PIP Pilot Program to continue without interruption.[13] Accordingly, the

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For purposes only of waiving the operative delay for this proposal, the Commission has

Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2009–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–038 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17637 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6705]

Correction to 30–Day Notice of Proposed Information Collection: DS–7655, Iraqi Citizens and Nationals Employed by U.S. Federal Contractors, Grantees, and Cooperative Agreement Partners, OMB Control Number 1405–0184; Corrections

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: This document contains a correction to the 30–Day Notice of Proposed Information Collection: DS–7655, Iraqi Citizens and Nationals Employed by U.S. Federal Contractors, Grantees, and Cooperative Agreement Partners, OMB Control Number 1405–0184 published in the **Federal Register** on Tuesday, July 14, 2009, in Volume 74–No. 133, page 34070. The document contained incorrect 'Estimated Number of Responses' due to a typographical error.

FOR FURTHER INFORMATION CONTACT: Robert S. Lower (POC), Department of State, A/LM Room 525, P.O. Box 9115 Rosslyn Station, Arlington, VA 22219, who may be reached at 703–875–5822 or at *LowerRS@state.gov.*

Correction

In the **Federal Register** of Tuesday, July 14, 2009, in Volume 74–No. 133, page 34070, in the 3rd column 7th bullet, correct the 7th bullet to read:

- *Estimated Number of Responses:* 200.

Dated: July 15, 2009.

William H. Moser,

Deputy Assistant Secretary, Office of Logistics Management, Bureau of Administration, Department of State.

[FR Doc. E9–17549 Filed 7–23–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–0001–N–17]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than September 22, 2009.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0509.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Jackson at *nakia.jackson@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety,

Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: State Safety Participation Regulations and Remedial Actions.

OMB Control Number: 2130–0509.

Abstract: The collection of information is set forth under 49 CFR part 212, and requires qualified State inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning State investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

Form Number(s): FRA F 6180.33/61/67/96/96A/109/110/111/112.

Affected Public: Businesses.

Respondent Universe: States and Railroads.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Application For Participation	15 States	15 updates	2.53 hours	38
Training Funding Agreement	30 States	30 agreements	1 hour	30
State Inspector Travel Vouchers	30 States	300 vouchers	1 hour	300
Annual Work Plan	30 States	30 reports	15 hours	450
Inspection Form (Form FRA F 6180.96)	30 States	18,000 forms	15 minutes	4,500
Violation Report—Motive, Power, and Equipment Regulations (Form FRA F 6180.109).	19 States	600 reports	4 hours	2,400
Violation Report—Operating Practices Regulations (Form FRA F 6180.67).	16 States	50 reports	4 hours	200
Violation Report—Hazardous Materials Regulations (Form FRA F 6180.110).	14 States	150 reports	4 hours	600
Violation Report—Hours of Service Law (F 6180.33).	16 States	21 reports	4 hours	84
Violation Report—Accident/Incident Reporting Rules (Form FRA F 6180.61).	16 States	10 reports	4 hours	40
Violation Report—Track Safety Regulations (Form FRA F 6180.111).	24 States	300 reports	4 hours	1,200
Violation Report—Signal and Train Control Regulations (Form FRA F 6180.112).	13 States	10 reports	4 hours	40
Remedial Actions Reports	573 Railroads	3,933 reports	15 minutes	983
Violation Report Challenge	573 Railroads	813 challenges	1 hour	813
Delayed Reports	573 Railroads	393 reports	30 minutes	197

Total Responses: 24,655.

Estimated Total Annual Burden: 11,875 hours.

Status: Extension of a currently approved collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on July 20, 2009.

Martin Eble,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–17612 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25290]

Commercial Driver's License Standards; Isuzu Motors America, Inc.'s Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to approve Isuzu North America Corporation's (Isuzu) application for an exemption for a period of 2 years. The exemption allows 20 Isuzu commercial motor vehicle (CMV) drivers, who are citizens and residents of Japan and hold a Japanese commercial driver's license (CDL), to test-drive Isuzu CMVs in the United States without a CDL issued by one of the States. Isuzu requested the exemption so that these driver-employees, as a team, can support the evaluation and testing of production and prototype Isuzu CMVs for sale in the United States. FMCSA believes the knowledge and skills training and testing that Japanese drivers must undergo to obtain a Japanese CDL ensures a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective on July 24, 2009 and expires on July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., FMCSA Office of Bus and Truck Standards and Operations, Driver and Carrier Operations Division, Telephone: 202–366–4325, or e-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315(b)(1) and 31136(e), FMCSA may grant an exemption for a maximum of 2 years if it finds ''* * * such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption * * *.'' The procedure for requesting an exemption is prescribed by 49 CFR part 381.

Isuzu Application for an Exemption

Isuzu has applied for an exemption from the requirement of 49 CFR 383.23 that operators of CMVs must obtain a CDL from one of the States. Specifically, it asks that 20 of its employee-drivers who are citizens and residents of Japan and hold a Japanese CDL be permitted to operate a CMV in the United States for a period of 2 years. The exemption would allow these individuals to test-drive Isuzu CMVs without a CDL issued by one of the States. A copy of the request for exemption is in the docket identified at the beginning of this notice.

Method To Ensure an Equivalent or Greater Level of Safety

These Isuzu drivers are experienced operators of CMVs. In Japan, drivers must hold a conventional driver's license for at least 3 years to be eligible for a CDL. They also must successfully pass both skills and knowledge tests to obtain a Japanese-issued CDL. A driver granted a Japanese CDL may legally operate any CMV allowed on the roads of Japan. Isuzu believes that these Japanese-CDL drivers will achieve a level of safety equaling or exceeding the level of safety that would be achieved without the exemption.

Comments

On April 6, 2009, FMCSA published a notice of Isuzu's application for exemption and requested comments from the public by May 6, 2009 (74 FR 15575). No comments were received.

FMCSA Decision

FMCSA believes that the operations of the 20 Isuzu drivers will ensure a level of safety that is equivalent to, or greater than, the level of safety that would be achieved without the exemption. FMCSA's decision to grant this exemption is based on the merits of the application for exemption and the considerable CMV-driving experience of these drivers. In addition, FMCSA considers the rigorous skills and knowledge testing that Japanese drivers undergo to obtain a Japanese CDL to be comparable to, or as effective as, the requirements of a U.S. CDL (49 CFR part 383). Therefore, FMCSA grants exemption from the requirements of 49 CFR 383.23 to the following 20 individuals, while employed by Isuzu, to enable them to operate CMVs in the U.S. without a U.S. CDL for a period of 2 years: Tadashi Shoda, Ryouji Matsuzawa, Hisashi Hashiguchi, Nobuhisa Okuda, Minoru Endo, Fumiaki Takei, Akira Yoshino, Tadao Shibuya, Akira Iizuka, Yoshinori Ugai, Kazuyoshi Tateishi, Naomi Uchida, Kiyoshi Toshima, Khoki Natsumi, Minuro Tsuchida, Mitsuo Konno, Hiroaki Kurata, Naoki Morimoto, Takayuki Kaneda, and Chito Agatsuma.

Terms and Conditions of the Exemption

This exemption is subject to the following terms and conditions: (1) These drivers are subject to the drug and alcohol regulations, including testing, as provided in 49 CFR part 382, (2) these drivers are subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the United States, (3) Isuzu shall notify FMCSA in writing if an exempted driver is convicted of a disqualifying offense described in sections 383.51 or 391.15 of the Federal Motor Carrier Safety Regulations (49 CFR 350 *et seq.*), (4) these drivers must keep, at all times, a copy of the exemption with them in the CMV they are driving, and (5) Isuzu must notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, that involves an exempted driver.

FMCSA will revoke this exemption if: (1) The Isuzu drivers fail to comply with the terms and conditions of the exemption, (2) the exemption results in a lower level of safety than was maintained before it was granted, or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: July 16, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–17617 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 2009, there were three applications approved. This notice also includes information on one application, approved in January 2009, inadvertently left off the January 2009 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Yuma County Airport Authority, Yuma, Arizona.

Application Number: 09–03–C–00–NYL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved In This Decision: $1,251,361.

Earliest Charge Effective Date: January 1, 2013.

Estimated Charge Expiration Date: July 1, 2017.

Class Of Air Carriers Not Required To Collect PFC'S:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Yuma Marine Corps Air Station/Yuma International Airport.

Brief Description of Projects Approved for Collection and Use:

Cargo apron rehabilitation and expansion.

Airport security.

Rehabilitate apron and taxilanes.

Conduct airport master plan.

Decision Date: January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: City of Roswell, New Mexico.

Application Number: 09–04–C–00–ROW. *Application Type:* Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $510,594.

Earliest Charge Effective Date: April 1, 2009.

Estimated Charge Expiration Date: December 1, 2013.

Class Of Air Carriers Not Required To Collect PFC's:

None.

Brief Description of Project Approved for Collection and Use:

Terminal renovation and expansion.

Enhanced taxiway markings.

Deicing equipment.

Air terminal fire alarm upgrade.

Passenger terminal seating.

Rehabilitate taxiways C and H: design and construction.

Relocate airport beacon and tower.

Rehabilitate and enhance security system and fencing.

Install airport entrance sign.

Expand and rehabilitate public parking lot—non-revenue.

Airport master plan update.

Acquire passenger loading ramp.

Acquire snow removal vehicle.

Runway rubber removal.

Acquire electric ground power unit.

Rehabilitate terminal apron.

Rehabilitate runway 3/21.

PFC administration costs.

Decision Date: February 3, 2009.

FOR FURTHER INFORMATION CONTACT: Andy Velayos, Louisiana, New Mexico Airports Development Office, (817) 222–5647.

Public Agency: Westchester County Department of Transportation—Airport Division, White Plains, New York.

Application Number: 09–05–C–00–HPN.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved In This Decision: $18,000,000.

Earliest Charge Effective Date: April 1, 2009.

Estimated Charge Expiration Date: August 1, 2013.

Class of Air Carriers Not Required to Collect PFC's:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Westchester County Airport.

Brief Description of Projects Approved for Collection and Use:

In-line baggage screening facility (design and construction).

Conveyance and disposal system for aircraft deicing fluid contaminated water (design and construction).

Decision Date: February 24, 2009.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 08–21–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $231,690,213.

Earliest Charge Effective Date: July 1, 2024.

Estimated Charge Expiration Date: May 1, 2026.

Class Of Air Carriers Not Required To Collect PFC's:

Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level:

Airfield design.

Brief Description of Projects Partially Approved for Collection and Use at a $3.00 PFC Level:

Western terminal area planning.

Determination: The FAA has determined that the City did not provide enough information for justification of the line items ''forecast review/derivative forecasts,'' ''airfield simulation,'' and ''supplemental studies revenue enhancement/new technologies'' in the PFC application. Therefore, those line items, totaling $570,960 in PFC revenue, were not approved for use of PFC revenue.

Airport access road improvements.

Determination: After review of the information provided by the City, the FAA determined that portions of the roadways included in the project description are ineligible for PFC funding.

Airport transit system (ATS) vehicle acquisition and system improvements.

Determination: After review of the information provided by the City, the FAA determined that there was a mathematical error in the amount the City originally requested for purchase of nine ATS cars. Therefore, the FAA's approved amount was less than the amount originally requested by the City.

Decision Date: February 26, 2009.

FOR FURTHER INFORMATION CONTACT: Jack Delaney, Chicago Airports District Office, (847) 294–7875.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
95–01–C–03–ABY Albany, GA	2/10/09	$362,561	$348,383	06/01/98	06/01/98
98–02–C–03–ABY Albany, GA	2/10/09	540,050	540,050	08/01/03	08/01/03
98–02–C–04–ABY Albany, GA	2/10/09	540,050	539,645	08/01/03	08/01/03
02–06–C–07–MSY New Orleans, LA	2/12/09	276,286,494	271,336,494	12/01/17	12/01/17
99–04–C–05–PNS Pensacola, FL	2/18/09	15,217,577	15,165,298	09/01/07	09/01/07
93–06–U–03–PNS Pensacola, FL	2/18/09	NA	NA	09/01/07	09/01/07
95–01–C–06–MCI Kansas City, MO	2/23/09	295,096,669	277,485,571	02/01/12	12/01/10

Issued in Washington, DC, on July 16, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–17450 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 2009, there were 10 applications approved. This notice also includes information on two applications, approved in February 2009, inadvertently left off the February 2009 notice. Additionally, 24 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Tupelo Airport Authority, Tupelo, Mississippi.

Kevin Application Number: 09–05–C–00–TUP.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $343,473.

Earliest Charge Effective Date: July 1, 2014.

Estimated Charge Expiration Date: December 1, 2018.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use: Extend runway 18/36. Widen and overlay runway 18/36.

Decision Date: February 24, 2009.

For Further Information Contact: Kevin Morgan, Jackson Airports District Office, (601) 664–9891.

Public Agency: City of Charlotte, North Carolina.

Application Number: 09–03–C–00–CLT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $80,765,972.

Earliest Charge Effective Date: December 1, 2018.

Estimated Charge Expiration Date: July 1, 2020.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Charlotte Douglas International Airport.

Brief Description of Projects Approved for Collection and Use:

Storm drain rehabilitation—Coffey Creek.

Terminal complex expansion—master planning.

Checkpoint modifications.

Baggage system modifications.

Roadway signage.

PFC application development.

Brief Description of Project Partially Approved for Collection and Use:

Taxiway bridges.

Determination: The cost estimate for the project included a contingency amount which is not PFC eligible.

Decision Date: February 26, 2009.

For Further Information Contact: John Marshall, Atlanta Airports District Office, (404) 305–7153.

Public Agency: City of Brownsville, Texas.

Application Number: 09–05–C–00–BRO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $3,055,866.

Earliest Charge Effective Date: June 1,2010.

Estimated Charge Expiration Date: December 1, 2018.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Taxiway G reconstruction.

Terminal renovation.

Taxiway D reconstruction.

PFC application and administration fees.

Decision Date: March 5, 2009.

For Further Information Contact: Glenn Boles, Texas Airports Development Office, (817) 222–5685.

Public Agency: Cities of Pullman, Washington and Moscow, Idaho.

Application Number: 09–06–C–00–PUW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $255,998.

Earliest Charge Effective Date: September 1, 2010.

Estimated Charge Expiration Date: January 1, 2013.

Class of Air Carriers Not Required to Collect PFC'S: Non-scheduled air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Pullman-Moscow Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Acquisition of snow removal equipment.
Snow removal equipment building renovation.
Replacement of windsock.
Acquisition of passenger loading ramp.
Purchase friction meter.
Purchase aircraft rescue and firefighting equipment.
Update storm water pollution prevention plan.
Wetlands delineation.
Rehabilitation/reconstruction of taxiway A and connecting taxilanes.
Directional sign panel replacement.
Access road reconstruction.
Rehabilitation of runway 5/23.
PFC administration costs.

Decision Date: March 9, 2009.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: Airport Authority District No. 1 of Calcasieu Parish, Lake Charles, Louisiana.

Application Number: 09–02–C–00–LCH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $420,000.

Earliest Charge Effective Date: October 1, 2009.

Estimated Charge Expiration Date: December 1,2011.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Airport access road improvements.
Acquire fingerprinting equipment.

Decision Date: March 12, 2009.

For Further Information Contact: Ilia Quinones, Louisiana/New Mexico Airports Development Office, (817) 222–5646.

Public Agency: Broome County Department of Aviation, Johnson City, New York.

Application Number: 09–12–C–00–BGM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $15,421.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: April 1, 2011.

Class of Air Carriers Not Required to Collect PFC'S: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Greater Binghamton Airport.

Brief Description of Project Approved for Collection and Use: Taxiways H and K rehabilitation, design and construction.

Brief Description of Projects Approved for Use:

Main apron rehabilitation design.
North and west apron rehabilitation design.
North and west apron rehabilitation construction.

Decision Date: March 13, 2009.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: City of El Paso, Texas.

Application Number: 09–05–C–00–ELP.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $20,634,000.

Earliest Charge Effective Date: April 1, 2009.

Estimated Charge Expiration Date: June 1, 2012.

Class of Air Carriers Not Required to Collect PFC'S: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at El Paso International Airport.

Brief Description of Projects Approved for Collection and Use:

Design and reconstruction of taxiway L.
Design and reconstruction of taxiway radius.

Decision Date: March 13, 2009.

For Further Information Contact: Guillermo Villalobos, Texas Airports Development Office, (817) 222–5657.

Public Agency: County of Glynn, Brunswick, Georgia.

Application Number: 09–03–C–00–BQK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $860,268.

Earliest Charge Effective Date: May 1, 2009.

Estimated Charge Expiration Date: April 1, 2017.

Class of Air Carriers Not Required to Collect PFC'S: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Brunswick Golden Isles Airport.

Brief Description of Projects Approved for Collection and Use:

Airfield drainage construction.
Airfield drainage design.
Airfield electrical improvements construction.
Airfield electrical improvements design.
Apron ramp joint replacement construction.
Apron ramp joint replacement design.
Aircraft rescue and firefighting truck design/specifications.
Aircraft rescue and firefighting truck purchase.
Runway 7/25 crack sealing and marking.
Runway incursion markings (enhanced center line).
Sweeper vehicle purchase.
Terminal project continued construction.
West general aviation ramp expansion.
West general aviation ramp expansion design.
PFC application preparation.

Decision Date: March 18, 2009.

For Further Information Contact: John Marshall, Atlanta Airports District Office, (404) 305–7153.

Public Agency: City of Waterloo, Iowa.

Application Number: 09–08–C–00–ALO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $201,930.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: November 1, 2011.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Runway 18/36 rehabilitation and edge lighting, phase 1.
Rehabilitation of airfield vault and control system.
Acquisition of snow removal equipment.

Decision Date: March 23, 2009.

For Further Information Contact: Todd Madison, Central Region Airports Division, (816) 329–2640.

Public Agency: Coos County Airport District, North Bend, Oregon.

Application Number: 09–09–C–00–OTH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,126,622.

Earliest Charge Effective Date: July 1, 2014.

Estimated Charge Expiration Date: December 1, 2021.

Class of Air Carriers Not Required to Collect PFC'S: Nonscheduled air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Southwest Oregon Regional Airport.

Brief Description of Project Approved for Collection and Use: Air traffic control tower.

Decision Date: March 24, 2009.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: County of La Plata and City of Durango, Colorado.

Application Number: 09–06–C–00–DRO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,825,450.

Earliest Charge Effective Date: July 1, 2009.

Estimated Charge Expiration Date: April 1, 2011.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Acquire south runway protection zone.
Construct south taxiway A extension.
Design/engineer south taxiway extension.
Realign airport road entrance and resurface roadways.
Acquire snow removal equipment.

Decision Date: March 26, 2009.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Tri-State Airport Authority, Huntington, West Virginia.

Application Number: 09–06–C–00–HTS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $1,122,712.

Earliest Charge Effective Date: May 1, 2009.

Estimated Charge Expiration Date: September 1, 2013.

Class of Air Carriers Not Required to Collect PFC'S: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Tri-State Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire friction measuring equipment.
Acquire aircraft rescue and firefighting vehicle.
Taxiway A construction/relocation.
Rehabilitate aircraft rescue and firefighting building and water system.
Rehabilitate airport entrance road.
Terminal rehabilitation and loading bridge.
Airport entrance road slope repair.
PFC application number 6.
Acquire aircraft rescue and firefighting vehicle.
Beacon relocation.
Main apron rehabilitation.
Runway safety area.

Decision Date: March 30, 2009.

For Further Information Contact: Matthew DiGiulian, Beckley Airports Field Office, (304) 252–6217.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
07–12–C–01–MDW Chicago, IL	02/20/09	$501,933,168	$523,808,168	11/01/53	09/01/54
05–05–C–01–MCI, Kansas City, MO	02/23/09	56,963,842	30,984,859	02/01/17	07/01/14
99–02–C–05–MCI, Kansas City, MO	02/23/09	9,556,186	7,375,439	07/01/12	04/01/11
00–03–C–03–MCI, Kansas City, MO	02/23/09	63,402,166	62,691,274	11/01/14	07/01/13
04–07–C–03–CMH, Columbus, OH	02/25/09	77,072,441	78,266,889	10/01/09	11/01/09
05–07–C–01–DLH, Duluth, MN	03/03/09	2,745,402	2,714,526	05/01/10	11/01/09
08–14–C–01–BNA, Nashville, TN	03/04/09	55,362,918	72,698,418	08/01/16	01/01/16
07–05–C–01–APF, Naples, FL	03/05/09	92,000	91,651	05/01/04	05/01/04
05–05–C–02–IAD, Chantilly, VA	03/06/09	773,787,106	2,089,325,913	05/01/17	12/01/38
97–01–C–01–IPT, Williamsport, PA	03/09/09	215,000	132,488	11/01/98	11/01/98
01–01–C–02–LCH, Lake Charles, LA	03/12/09	1,177,234	1,377,234	07/01/09	10/01/09
06–03–C–01–ELP, El Paso, TX	03/12/09	15,748,267	9,594,095	06/01/08	03/01/07
05–02–C–01–ANC, Anchorage, AK	03/16/09	14,000,000	25,000,000	07/01/09	07/01/15
03–04–C–02–LFT, Lafayette, LA	03/16/09	2,351,898	2,677,464	04/01/08	04/01/08
05–10–C–04–MCO, Orlando, FL	03/24/09	540,350,706	610,887,236	01/01/17	12/01/19
92–01–C–02–GTR, Columbus, MS	03/24/09	1,698,211	1,526,314	01/01/04	01/01/04
01–09–C–02–BNA, Nashville, TN	03/25/09	4,145,183	3,610,373	04/01/03	04/01/03
04–05–C–01–HTS, Huntington, WV	03/25/09	436,233	301,421	12/01/08	12/01/08
08–12–C–01–COS, Colorado Springs, CO	03/26/09	2,494,547	2,991,994	12/01/10	11/01/10
01–03–C–OS–LIT, Little Rock, AR	03/27/09	18,382,528	12,735,462	07/01/05	07/01/04
04–04–U–02–LIT, Little Rock, AR	03/27/09	NA	NA	07/01/05	07/01/04
06–05–C–O2–LJT, Little Rock, AR	03/27/09	5,113,333	6,284,571	05/01/06	10/01/05
07–06–C–01–LIT, Little Rock, AR	03/27/09	21,763,270	34,723,804	01/01/10	11/01/11
05–05–C–01–DRO, Durango, CO	03/30/09	1,604,120	305,241	07/01/09	11/01/05

Issued in Washington, DC on July 16, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–17580 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2009, there were seven applications approved. This notice also includes information on nine applications, one approved in November 2006, two approved in February 2008, one approved in June 2008, one approved in September 2008, two approved in October 2008, one approved in November 2008, and one approved in May 2009, inadvertently left off the November 2006, February 2008, June 2008, September 2008, October 2008, November 2008, and May 2009 notices, respectively. Additionally, 16 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the Provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 07–08–C–00–CHO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $426,400.

Earliest Charge Effective Date: July 1, 2009.

Estimated Charge Expiration Date: January 1, 2010.

Class of Air Carriers Not Required to Collect PFC's:

All air taxi/commercial operators filing or requested to file FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Charlottesville-Albemarle Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire interactive employee training system.

Seal coat general aviation apron.

PFC project administration fees.

Brief Description of Projects Approved for Collection:

Land acquisition—runway 21 runway protection zone.

Construct snow removal equipment building.

Construct access road—west side.

Decision Date: November 20, 2006.

For Further Information Contact: Terry Page, Washington Airports District Office, (703) 661–1357.

Public Agency: Maryland Department of Transportation and Maryland Aviation Administration, Baltimore, Maryland.

Application Number: 08–07–C–00–BWI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $16,298,000.

Earliest Charge Effective Date: January 1, 2017.

Estimated Charge Expiration Date: March 1, 2017.

Class of Air Carriers Not Required to Collect PFC's:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Baltimore-Washington International Thurgood Marshall Airport.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Terminal improvement program.

Brief Description of Project Approved for Collection at a $4.50 PFC Level: Runway safety area (supporting design for environmental assessment).

Decision Date: February 13, 2008.

For Further Information Contact: Terry Page, Washington Airports District Office, (703) 661–1357.

Public Agency: City of Manchester, New Hampshire.

Application Number: 08–12–U–00–MHT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved for Use in this Decision: $11,401,727.

Charge Effective Date: November 1, 2018.

Estimated Charge Expiration Date: October 1, 2020.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Glycol collection system.

Extension of runway 24 safety area.

Decision Date: February 29, 2008.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Louisville Regional Airport Authority, Louisville, Kentucky.

Application Number: 08–05–C–00–SDF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $900,000.

Earliest Charge Effective Date: June 1, 2018.

Estimated Charge Expiration Date: July 1, 2018.

Class of Air Carriers Not Required to Collect PFC's:

All air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Louisville International Airport.

Brief Description of Projects Approved for Collection and Use:

Purchase aircraft rescue and firefighting truck with 1,500 gallon unit.

Purchase interactive employee security identification display area and driver training system.

Decision Date: September 29, 2008.

For Further Information Contact: Tommy DuPree, Memphis Airports District Office, (901) 322–8185.

Public Agency: Helena Regional Airport Authority, Helena, Montana.

Application Number: 08–04–C–00–HLN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $893,513.

Earliest Charge Effective Date: October 1, 2012.

Estimated Charge Expiration Date: February 1, 2015.

Class of Air Carriers not Required to Collect PFC'S:

On-demand, non-scheduled air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class

accounts for less than 1 percent of the total annual enplanements at Helena Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate taxiways A, B, C, and D pavement.

Install security gates.

Rocky Mountain emergency services training center upgrades.

Terminal security upgrade.

Aircraft rescue and firefighting/snow removal equipment building expansion.

Class 2 aircraft rescue and firefighting truck.

Airside capacity master plan.

Jetway rehabilitation.

Snow removal equipment.

Rehabilitate taxiways A, B, C, D, and E.

Air carrier ramp expansion.

1,500 gallon aircraft rescue and firefighting truck.

Satellite aircraft rescue and firefighting building expansion.

Terminal expansion.

Decision Date: October 8, 2008.

For Further Information Contact: Dave Stelling, Helena Airports District Office, (406) 449–5257.

Public Agency: County of Oneida and City of Phinelander, Wisconsin.

Application Number: 08–11–C–00–RHI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved In This Decision: $51,432.

Earliest Charge Effective Date: May 1, 2012.

Estimated Charge Expiration Date: November 1, 2012.

Class of Air Carriers Not Required to Collect PFC's:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rhinelander/Oneida County Airport.

Brief Description of Projects Approved for Collection and Use:

General aviation area expansion.

Lighting design.

Replace/upgrade lighting and electrical.

PFC administration.

Decision Date: October 14, 2008.

For Further Information Contact: Nancy Nistler, Minneapolis Airports District Office, (612) 713–4353.

Public Agency: State of Connecticut Department of Transportation Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 08–17–C–00–BDL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved In This Decision: $11,260,335.

Earliest Charge Effective Date: November 1, 2016.

Estimated Charge Expiration Date: June 1, 2017.

Class of Air Carriers Not Required to Collect PFC's:

On-demand air taxi commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bradley International Airport.

Brief Description of Projects Approved for Collection at a $4.50 *PFC Level:*

Reconstruction of runway 6/24.

Construct of taxiway W off runway 15.

Purchase of two mobile glycol collection units.

Pilot noise insulation and residential sound insulation program.

Purchase two aircraft rescue and firefighting trucks.

Design of airfield lighting vault.

Installation of electrical cogeneration engine.

Decision Date: November 3, 2008.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Dubuque Regional Airport Commission, Dubuque, Iowa.

Application Number: 09–10–U–00–DBQ.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved For Use In This Decision: $3,292,496.

Charge Effective Date: November 1, 2006.

Estimated Charge Expiration Date: March 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Terminal schematic/site design.

Runway 31 parallel and connecting taxiways.

Decision Date: May 28, 2009.

For Further Information Contact: Todd Madison, Central Region Airports Division, (816) 329–2640.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 09–15–C–00–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $848,562.

Earliest Charge Effective Date: December 1, 2013.

Estimated Charge Expiration Date: April 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitation of taxiways G and H (phase I).

Reconstruction of runway 12/20 (design).

Update airport master plan/airport layout plan.

Fleet improvement (phase II).

Brief Description of Disapproved Projects: Interior signage.

Determination: This project is not PFC eligible as a stand-alone project.

Operations and communications center.

Determination: This project is not PFC-eligible.

Decision Date: June 2, 2009.

For Further Information Contact: Chris Schaeffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 09–16–C–00–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $719,024.

Earliest Charge Effective Date: April 1, 2014.

Estimated Charge Expiration Date: August 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Jet bridge rehabilitation.

Brief Description of Disapproved Project: Terminal seating.

Determination: This project is not PFC eligible as a stand-alone project.

Decision Date: June 4, 2009.

For Further Information Contact: Chris Schaeffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Jackson, Medford, Oregon.

Application Number: 09–10–C–00–MFR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved In This Decision: $87,302.

Earliest Charge Effective Date: August 1, 2025.

Estimated Charge Expiration Date: September 1, 2025.

Class of Air Carriers Not Required to Collect PFC's:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rogue Valley International—Medford Airport.

Brief Description of Projects Approved for Collection and Use:

Aircraft rescue and firefighting truck.

Master plan.

Taxiway centerline markings.

PFC administration.

Decision Date: June 4, 2009.

For Further Information Contact: Trang Iran, Seattle Airports District Office, (425) 227–1662.

Public Agency: Cedar Rapids Airport Commission, Cedar Rapids, Iowa.

Application Number: 09–05–C–00–CID.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $11,883,739.

Earliest Charge Effective Date: November 1, 2009.

Estimated Charge Expiration Date: November 1, 2015.

Class of Air Carriers Not Required to Collect PFC's:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at The Eastern Iowa Airport.

Brief Description of Projects Approved for Collection and Use:

Reconstruct runway 9/27.

Renovate terminal building—C concourse and collector doors.

Purchase snow removal equipment.

PFC application development.

PFC program administration.

Brief Description of Projects Approved for Use:

Renovate terminal building—in-line bag screening.

Construct aircraft rescue and firefighting building.

Decision Date: June 5, 2009.

For Further Information Contact: Todd Madison, Central Region Airports Division, (816) 329–2640.

Public Agency: City of Dayton, Ohio.

Application Number: 09–06–C–00–DAY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,220,906.

Earliest Charge Effective Date: May 1,2017.

Estimated Charge Expiration Date: November 1, 2017.

Class Of Air Carriers Not Required to Collect PFC's:

Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than I percent of the total annual enplanements at Dayton International Airport (DAY).

Brief Description of Projects Approved for Collection at Day and Use at Day:

Airport water main.

Transportation Security Administration security checkpoint construction.

PFC implementation and administration.

Install wildlife fencing.

Airfield obstruction removal.

Airfield drainage system improvements.

Airfield pavement reconstruction.

Master plan and airport layout plan update.

Improve 6R/24L runway safety area.

Perimeter road projects.

Pavement management study—II.

Brief Description of Projects Approved for Collection at Day and Use at Dayton-Wright Brothers Airport:

Airport layout plan update and runway safety area study.

Install wildlife fencing.

Decision Date: June 12, 2009.

For Further Information Contact: Irene Porter, Detroit Airports District Office, (734) 229–2915.

Public Agency: City of Harlingen, Texas.

Application Number: 09–04–C–00–HRL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $13,044,000.

Earliest Charge Effective Date: August 1, 2009.

Estimated Charge Expiration Date: May 1, 2012.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Valley International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal baggage handling improvements—feasibility study.

Rehabilitate lighting—runway 17L and vault.

Taxiway improvements—H, A and B.

Replace airfield fencing.

Replace aircraft rescue and firefighting building.

Purchase runway sweeper.

Upgrade terminal roadway system.

Rehabilitate terminal building.

PFC administration cost.

Rehabilitate lighting—taxiways C, H and B.

Runway improvements—runway 17R/35L.

Runway improvements—runway 13/31.

Replace aircraft rescue and firefighting trucks.

Replace aircraft rescue and firefighting equipment.

Decision Date: June 15, 2009.

For Further Information Contact: Glenn Boles, Texas Airports Development Office (817) 222–5685.

Public Agency: City of Idaho Falls, Idaho.

Application Number: 09–04–C–00–IDA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,658,299.

Earliest Charge Effective Date: July 1, 2020.

Estimated Charge Expiration Date: October 1, 2023.

Class of Air Carriers Not Required to Collect PFC's:

Non-scheduled air taxi/commercial operators filing FAA Form 1800–31 and utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Idaho Falls Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate taxiway C.

Install runway 20 precision approach path indicators.

Procure snow removal equipment.

Extend terminal access road.

Rehabilitate east/west general aviation apron.

Rehabilitate runway 17/35.

Rehabilitate air carrier apron.

Design and construct southwest general aviation apron.

Acquire snow removal equipment.

Reconstruct/rehabilitate runway 2/20.

Construct snow removal equipment building.

Master plan.
PFC administration costs.
Rehabilitate and expand cargo apron.
Rehabilitate taxiway B (parallel taxiway for runway 17/35).
Rehabilitate taxiway A (parallel taxiway for runway 2/20).

Decision Date: June 16, 2009.
For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
08–07–C–01–BWI, Baltimore, MD	04/29/09	$16,298,000	$10,689,000	03/01/17	03/01/17
07–10–C–01–DSM, Des Moines, IA	05/26/09	7,662,500	9,152,500	08/01/17	08/01/17
02–04–C–04–MOB, Mobile, AL	05/28/09	2,837,748	2,854,775	02/01/07	02/01/07
05–08–C–02–DSM, Des Moines, IA	05/28/09	2,250,000	2,647,600	01/01/12	01/01/12
05–09–C–01–DSM, Des Moines, IA	05/28/09	9,673,807	10,456,407	08/01/15	08/01/15
08–11–C–01–DSM, Des Moines, IA	05/28/09	2,525,646	4,681,798	01/01/18	01/01/18
05–05–C–02–GEG, Spokane, WA	05/28/09	13,827,800	13,213,936	12/01/07	04/01/07
00–09–C–02–HSV, Huntsville, AL	06/02/09	777,615	735,242	11/01/03	11/01/03
00–05–C–02–CLM, Port Angeles, WA	06/17/09	198,350	208,350	10/01/03	09/01/02
04–08–C–01–RHI, Rhinelander, WI	06/22/09	200,936	159,499	04/01/05	05/01/05
99–02–C–01–CMI, Champaign, IL	06/23/09	1,418,400	1,136,910	02/01/04	02/01/04
07–10–C–02–DSM, Des Moines, IA	06/23/09	9,152,500	9,175,000	08/01/17	08/01/17
00–05–C–01–YKM, Yakima, WA	06/23/09	480,000	219,660	04/01/02	04/01/02
02–08–C–01–YKM, Yakima, WA	06/24/09	55,000	42,805	09/01/02	03/01/01
05–09–C–01–YKM, Yakima, WA	06/24/09	198,184	217,898	11/01/03	07/01/02
05–10–C–01–YKM, Yakima, WA	06/24/09	701,494	712,147	06/01/08	08/01/06

Issued in Washington, DC on July 16, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–17583 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 2009, there were no applications approved. This notice also includes information on four applications, approved in April 2009, inadvertently left off the April 2009 notice. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. No. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Fayetteville, North Carolina.

Application Number: 09–04–C–00–FAY.

Application Type: Impose and use a PFC.

PFC Level: $4.00.

Total PFC Revenue Approved in This Decision: $3,796,330.

Earliest Charge Effective Date: July 1, 2009.

Estimated Charge Expiration Date: June 1, 2024.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Terminal phase II.
Employee parking (non-revenue).
West general aviation ramp rehabilitation.
Land acquisition.
Handicap access to narrow body jets.
Fire training facility rehabilitation.
Runway 4/22 rehabilitation—design.
Aircraft rescue and firefighting rehabilitation—design.
Snow removal equipment building—design/construction.
Electrical vault upgrades—design, generator installation.
Stormwater improvement.
Vault construction.
Runway 4/22 construction.
Security fence and gates.
Replace aircraft rescue and firefighting truck.
Air carrier asphalt (rehabilitate apron)—design.
Taxiway A design, shoulder, overlay, lights.
Extend taxiway A design.
Construct taxiway A shoulders, overlay, lights.

Brief Description of Project Partially Approved for Collection and Use:

Aircraft rescue and firefighting rehabilitation.

Determination: The FAA determined that only two of the three bays were PFC eligible.

Brief Description of Projects Approved for Collection:

Replace B4 jet bridge.
Construct air carrier asphalt (rehabilitate apron).
Construct taxiway A extension.
Air carrier concrete (apron) repair—design.
Terminal phase IV.
Airline concrete (apron) repair—construction.
Runway 4/22 paved shoulders—design.
Land acquisition—runway 4 runway protection zone.
Construct runway 4/22 paved shoulders.
General aviation automobile parking (non-revenue).

Brief Description of Disapproved Projects:

Terminal phase III floor upgrade.
Terminal phase II public seating.
Public seating.

Determination: The FAA determined that none of these projects were PFC eligible as stand alone projects.

Decision Date: April 8, 2009.

FOR FURTHER INFORMATION CONTACT: John Marshall, Atlanta Airports District Office, (404) 305–7153.

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 09–15–C–00–BNA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $11,287,500.

Earliest Charge Effective Date: January 1, 2016.

Estimated Charge Expiration Date: January 1, 2017.

Class of Air Carriers not Required to Collect PFC'S: Air taxi operators that enplane fewer than 25,000 passengers per year and/or provide unscheduled air service at Nashville International Airport.

Determination: Approved. Based on information contained in the public agency's application, the FM has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Nashville International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Reconstruct runway 2L/20R (design and construction).

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Terminal roof replacement.

Brief Description of Project Partially Approved for Collection and Use at a $3.00 PFC Level: Sprinkler system in utility tunnels.

Determination: The public agency requested that PFCs pay 100 percent of the project costs. However, the FAA determined that the utilities serve both eligible and ineligible areas of the terminal. Based on information provided by the public agency, the terminal is 85 percent eligible, thus, this PFC approval was limited to 85 percent of the total project cost.

Decision Date: April 28, 2009.

For Further Information Contact: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

Public Agency: City of New Orleans and New Orleans Aviation Board, New Orleans, Louisiana.

Application Number: 09–09–C–00–MSY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,775,439.

Earliest Charge Effective Date: January 1, 2020.

Estimated Charge Expiration Date: April 1, 2020.

Class of Air Carriers Not Required to Collect PFC's: Part 135 on-demand air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Louis Armstrong New Orleans International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Taxiway C extension—east.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Hazardous wildlife study.

Brief Description of Disapproved Project:

Hazard mitigation study.

Determination: This project does not meet the requirements of § 158.15(b) and, therefore, is not PFC-eligible.

Brief Description of Withdrawn Project:

Auxiliary power facility.

Date of Withdrawal: February 11, 2009.

Decision Date: April 29, 2009.

For Further Information Contact: Andy Velayos, Louisiana/New Mexico Airports Development Office, (817) 222–5647.

Public Agency: City of Phoenix, Arizona.

Application Number: 09–09–C–00–PHX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,858,636,000.

Earliest Charge Effective Date: August 1, 2010.

Estimated Charge Expiration Date: November 1, 2028.

Classes of Air Carriers Not Required to Collect PFC'S:

(1) Nonscheduled/on-demand air carriers filing FAA Form 1800–31; (2) commuters of small certified air carriers filing U.S. Department of Transportation (DOT) Form T–100 with less than 7,500 enplanements each annually at Phoenix Sky Harbor International Airport (PHX); (3) large certified route air carriers filing DOT Form T–100 with less than 7,500 enplanements each annually at PHX; and (4) foreign air carriers filing DOT Form T–100(f) with less than 7,500 enplanements each annually at PHX.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at PHX.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Automated train.

Community noise reduction program.

Terminal 4 apron rehabilitation.

Airfield lighting and runway sign relocation.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Terminal capacity improvements.

South infield paving.

Decision Date: April 30, 2009.

For Further Information Contact: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

AMENDMENT TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
06–05–C–02–BWI, Baltimore, MD	04/28/09	$267,602,000	$256,062,000	01/01/16	01/01/16
07–06–U–01–BWI, Baltimore, MD	04/28/09	NA	NA	01/01/16	01/01/16
03–01–C–02–RDU, Raleigh-Durham, NC	04/30/09	9,778,473	7,430,029	10/01/04	10/01/04
03–03–C–01–UNV, State College, PA	04/30/09	1,510,612	804,936	07/01/06	07/01/06
01–02–C–04–HRL, Harlingen, TX	05/05/09	5,436,858	5,470,023	12/01/07	08/01/07
07–03–C–01–HRL, Harlingen, TX	05/05/09	7,885,824	3,590,824	03/01/11	07/01/09
04–06–C–01–EAT, Wenatchee, WA	05/06/09	356,000	356,000	11/01/06	11/01/06
95–03–C–03–SEA, Seattle, WA	05/14/09	288,930,000	292,882,278	03/01/03	03/01/03
05–05–C–01–LAN	05/15/09	4,137,468	1,414,664	02/01/22	01/01/19

Issued in Washington, DC, on July 16, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–17582 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2009, there were six applications approved. This notice also includes information on one application, approved in May 2006, inadvertently left off the May 2006 notice. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Craven County Regional Airport Authority, New Bern, North Carolina.

Application Number: 06–03–C–00–EWN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $518,877.

Earliest Charge Effective Date: November 1, 2024.

Estimated Charge Expiration Date: October 1, 2025.

Class of Air Carriers Not Required to Collect PFC'S:

None.

Brief Description of Projects Approved for Collection and Use:

Acquire land, Temple tract.

Acquire snow and foreign object debris removal equipment.

Conduct airport master plan study.

High speed connector taxiway and taxiway K extension to taxiway I.

Expand general aviation apron.

Install glide slope.

Remove obstructions, runway 4 clearing.

Improve airport drainage.

Rehabilitate runway.

Remove obstructions, runway 13/31.

Rehabilitate general aviation apron.

Install runway vertical/visual guidance.

Improve airport drainage.

Acquire land, Sechrist property.

Security camera.

Security fencing.

Badge security equipment.

Security truck.

Construct service road.

Extend runway 13 safety area.

Expand apron.

Expand building.

Install emergency generator.

Extend taxiway.

Construct perimeter road.

Aircraft rescue and firefighting garage.

Aircraft rescue and firefighting vehicle.

Air traffic control tower radios and equipment.

Remove obstructions.

Update airport master plan study.

Rehabilitate taxiway.

Acquire friction measuring equipment.

Improve airport drainage (planning).

PFC audit and administration cost.

Decision Date: May 11, 2006.

For Further Information Contact: Lloyd Nealis, Atlanta Airports District Office, (404) 305–7142.

Public Agency: Spokane Airport Board, Spokane, Washington.

Application Number: 09–07–U–00–GEG.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved for Use in this Decision: $23,000,000.

Charge Effective Date: December 1, 2007.

Estimated Charge Expiration Date: April 1, 2012.

Class of Air Carriers Not Required to Collect PFC's:

No change from previous decision.

Brief Description of Projects Approved for Use at a $4.50 PFC Level:

Construction of runway 03 extension.

Decision Date: April 7, 2009.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: Salt Lake City Department of Airports, Salt Lake City, Utah.

Application Number: 09–11–C–00–SLC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $68,334,400.

Earliest Charge Effective Date: February 1, 2010.

Estimated Charge Expiration Date: January 1, 2012.

Class of Air Carriers Not Required to Collect PFC's:

Air taxi/commercial operators filing or required to file FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Runway 16R/34L storm drain improvements.

Airfield lighting upgrade to 5-step regulators.

Taxiway H reconstruction (H4 to H7).

Concourse apron rehabilitation, phase II (C–D apron).

Federal Inspection Services facility remodel.

International terminal modifications (baggage re-check).

End of runway deicing program, phase I.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level:

Potable water cabinets.

Brief Description of Projects Partially Approved for Collection and Use at a $3.00 PFC Level:

Winter operations equipment.

Determination: The FAA determined that two of the proposed vehicles, pickup trucks with utility bodies, were intended for airfield maintenance and, thus, were ineligible.

Cooling tower and chiller upgrade.

Determination: The FAA determined that this equipment serves both eligible and ineligible areas of the passenger terminal. The PFC approval is limited to the eligible share of the terminal, 76 percent.

Terminal 1 air handler replacement.

Determination: The FAA determined that this equipment serves both eligible and ineligible areas of the passenger terminal. The PFC approval is limited to the eligible share of the terminal, 81 percent.

Decision Date: April 10, 2009.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Kenton County Airport Board, Cincinnati, Ohio.

Application Number: 09–12–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $27,499,000.

Earliest Charge Effective Date: August 1, 2012.

Estimated Charge Expiration Date: September 1, 2014.

Classes of Air Carriers Not Required to Collect PFC's:

(1) Part 121 supplemental operators, which operate at the airport without an operating agreement with the Kenton County Airport Board and enplane less than 1,500 passengers per year; and (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal 2 flight information display system and information technology upgrades to terminal 2 common use gates.

Upgrade security access control system.

Apron/taxi lanes pavement rehabilitation—phase 3.

In-line baggage handling system and improvements at concourse B.

Terminal 2 reconfiguration for secure hold rooms.

Pavement management system administration.

Terminal 2 passenger loading bridges—phase 2.

Restroom rehabilitation and improvements, terminal 2, concourses A and B.

South aircraft rescue and firefighting pavement removal and replacement.

PFC program administrative costs—1994 through 2012.

Concourse A loading bridges—phase 1.

Gate electrification—Fiscal Year 2009—phase 1.

Video recording system.

Apron/taxi lanes pavement rehabilitation—phase 4.

Decision Date: April 15, 2009.

For Further Information Contact: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 09–14–C–00–MRY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $854,823.

Earliest Charge Effective Date: August 1, 2009.

Estimated Charge Expiration Date: August 1, 2010.

Classes of Air Carriers Not Required To Collect PFC'S:

(1) Nonscheduled/on-demand air carriers filing FAA Form 1800–31; and (2) commuters or small certificated air carriers filing Department of Transportation Form T–100.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

Brief Description of Projects Approved for Collection and Use:

Residential soundproofing, phase XIII.

Runway safety area environmental, phases I and II.

Airfield pavement improvements, phases II and III.

Flight information display system and access information equipment and services. Airport access and road safety/security design.

Brief Description of Project Approved for Collection: Runway safety area design.

Decision Date: April 23, 2009.

For Further Information Contact: Gretchen Kelly, San Francisco Airports District Office, (650) 876–2778, extension 623.

Public Agency: City of Morgantown, West Virginia.

Application Number: 09–07–C–00–MGW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $663,774.

Earliest Charge Effective Date: June 1, 2009.

Estimated Charge Expiration Date: January 1, 2026.

Class of Air Carriers Not Required To Collect PFC'S:

None.

Brief Description of Projects Approved for Collection and Use:

Acquire security equipment.
Extend taxiway A.
Improve runway safety area (design/construct).
Acquire safety equipment.
Security enhancements.
Acquire equipment.
Design and construct snow removal equipment/maintenance building.
Security cameras.
Snow removal equipment.
Construct deicing containment facility.
Rehabilitate terminal apron.
Improve snow removal equipment building.
Install taxiway lighting.
Install apron lighting.
Conduct airport master plan study.
Rehabilitate south apron.
Improve airport drainage.
Improve terminal building.
Acquire aircraft rescue and firefighting vehicle.
Install perimeter fence.
PFC application and administration.

Decision Date: April 27, 2009.

For Further Information Contact: Matthew DiGiulian, Beckley Airports Field Office, (304) 252–6217.

Public Agency: City of Rapid City, South Dakota.

Application Number: 09–06–C–00–RAP.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,595,348.

Earliest Charge Effective Date: June 1, 2009.

Estimated Charge Expiration Date: November 1, 2011.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rapid City Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Baggage system improvements.
Acquire snow removal equipment vehicles.
New aircraft rescue and firefighting station.
Electrical vault and communication center.
Taxiway A relocation/apron/service.
PFC application and administration.

Decision Date: April 28, 2009.

For Further Information Contact: Thomas Schauer, Bismarck Airports District Office, (847) 294–7674.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
04–09–C–04–CRW Charleston, WV	04/01/09	$7,719,526	$9,719,526	09/01/11	03/01/13
93–02–C–01–MCO Orlando, FL	04/02/09	9,957,000	5,140,005	04/01/95	04/01/95
94–02–C–06–MGW Morgantown, WV ..	04/03/09	130,344	130,344	10/01/99	10/01/99
96–03–C–03–MGW Morgantown, WV ..	04/03/09	18,450	935	02/01/02	02/01/02
97–04–U–01–MGW Morgantown, WV ..	04/03/09	NA	NA	10/01/99	10/01/99
99–05–C–02–MGW Morgantown, WV ..	04/03/09	192,739	93,771	06/01/04	06/01/04
*93–01-I-02–LRD Laredo, TX	04/08/09	6,303,839	6,303,839	07/01/10	01/01/13
04–05–C–04–LBB Lubbock, TX	04/08/09	5,280,392	4,168,971	08/01/07	08/01/07
02–06–C–01–MGW Morgantown, WV ..	04/13/09	506,680	506,680	03/01/08	03/01/08
02–02–C–01–ABQ Albuquerque, NM	04/20/09	44,483,079	41,844,635	12/01/07	09/01/08
06–06–C–01–GRK Killeen, TX	04/20/09	2,713,561	2,780,476	03/01/10	03/01/10
95–01–C–01–PPG Pago Pago, AS	04/23/09	1,236,306	950,000	06/01/00	06/01/00

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Laredo, TX, this change is effective on June 1, 2009.

Issued in Washington, DC on July 16, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–17581 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0069]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ELECTRIC LEOPARD.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0069 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 24, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0069. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ELECTRIC LEOPARD is:

Intended Use: ''Recreational sailing charters and sailing school instruction.''

Geographic Region: ''California, Oregon, Washington, Alaska (excluding Southeast Alaska), Hawaii.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 16, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–17615 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0070]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DRAGONFLY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, are listed below. The complete application is given in DOT docket MARAD–2009–0070 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 24, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0070. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket are available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *DRAGONFLY* is:

Intended Use: ''daily/weekly sailboat charters with owner operating as captain.''

Geographic Region: ''Florida.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 16, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–17614 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0068]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JACK.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0068 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 24, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0068. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *JACK* is:

Intended Use: ''Sight seeing passenger charter.''

Geographic Region: ''Washington State''.

Privacy Act

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 16, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–17613 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0063]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SWANY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0063 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 24, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0063. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SWANY is:

Intended Use: ''The applicant proposes to use the vessel for day and overnight charters and sightseeing.''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Delaware, New Jersey, Maryland, Virginia, District of Columbia, North Carolina, South Carolina, Georgia, and Florida.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 2, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–16251 Filed 7–23–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended

AGENCY: Office of Financial Stability, Treasury.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, and the Office of Management and Budget (''OMB'') Circular A–130 and Memorandum M–07–16, the Department of the Treasury (the ''Department''), Office of Financial Stability (''OFS'') gives notice of a proposed system of records entitled, ''Treasury/DO .219—TARP Standards for Compensation and Corporate Governance—Executive Compensation Information System.''

DATES: Comments must be received no later than August 24, 2009. The proposed new system of records will be effective September 2, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Written comments should be sent to the Department of the Treasury, ATTN: Director, Office of Financial Stability, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Daylight Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Robert Jackson, Jr., Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at 202–622–0667 or via electronic mail at *robert.jackson@do.treas.gov.*

SUPPLEMENTARY INFORMATION: OFS is establishing the TARP Standards for Compensation and Corporate Governance—Executive Compensation Information System to assist the Department in carrying out its responsibilities under Section 111 of the Emergency Economic Stabilization Act of 2008 (''EESA''), as amended by the American Recovery and Reinvestment Act of 2009 (''ARRA''), to provide

guidance on the executive compensation and corporate governance provisions of EESA that apply to entities that receive financial assistance under the Troubled Asset Relief Program (''TARP'').

The information collected and maintained by the Department within this system of records is obtained from the TARP recipient. The information pertains to executive officers identified in the TARP recipient's annual report on Form 10–K or proxy statement. Information from the TARP recipient may also include information about compensation payments or structures for a TARP recipient's most highly compensated employees who are not senior executive officers but are potentially subject to the restrictions imposed by either EESA or ARRA, or other employees not subject to these restrictions but with respect to whom the Department provides guidance.

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives; the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed system of records entitled, ''Treasury/DO.219—TARP Standards for Compensation and Corporate Governance—Executive Compensation Information'' is published in its entirety below.

Dated: July 17, 2009.

Elizabeth Cuffe,

Deputy Assistant Secretary for Privacy and Treasury Records.

Treasury/DO–219

SYSTEM NAME:

TARP Standards for Compensation and Corporate Governance—Executive Compensation Information.

SYSTEM LOCATION:

Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. *Senior Executive Officers or ''SEOs.''* SEOs of TARP recipients will be covered by the system. The term ''SEO'' means an employee of the TARP recipient who is a ''named executive officer,'' as that term is defined by Instruction 1 to Item 402(a)(3) of Regulation S–K of the Federal securities laws. 17 CFR 229.402(a). A TARP recipient that is a ''smaller reporting company,'' as that term is defined by Item 10 of Regulation S–K, 17 CFR 229.10, is required to identify SEOs consistent with the immediately preceding sentence. A TARP recipient that is a ''smaller reporting company'' must identify at least five SEOs, even if only three named executive officers are provided in the disclosure pursuant to Item 402(m)(2) of Regulation S–K, 17 CFR 229.402(m)(2), provided that no employee must be identified as an SEO if the employee's total annual compensation does not exceed $100,000 as defined in Item 402(a)(3)(1) of Regulation S–K. 17 CFR 229.402(a)(3)(1).

b. *Most highly compensated employees.* Most highly compensated employees of TARP recipients will be covered by the system. The term ''most highly compensated employee'' means the employee of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, for this purpose, a former employee who is no longer employed as of the first day of the relevant fiscal year of the TARP recipient is not a most highly compensated employee unless it is reasonably anticipated that such employee will return to employment with the TARP recipient during such fiscal year.

c. *Other employees.* Certain other employees of TARP recipients may be covered by the system in the event that the TARP recipient or the employee requests guidance from the Department with respect to the employee's compensation or the Department otherwise provides guidance with respect to the employee's compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include, but are not limited to, identifying information such as: name(s), employer; employee identification number, position, and quantitative and qualitative information with respect to the employee's performance.

The types of records in the system may be:

a. Comprehensive compensation data provided by the individual's employer for current and prior years.

b. Information relating to compensation plan design and documentation.

c. Company performance data relating to compensation plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is authorized by 31 U.S.C. 321 as well as Section 111 of the Emergency Economic Stabilization Act of 2008 (''EESA''), as amended by the American Recovery and Reinvestment Act of 2009 (''ARRA''). 12 U.S.C. 5221.

PURPOSE(S):

The Department of the Treasury collects this information from each TARP recipient in connection with the review of compensation payments and compensation structures applicable to SEOs and certain highly compensated employees. Information with respect to certain payments to highly compensated employees will also be reviewed in connection with a determination of whether such payments were inconsistent with the purposes of section 111 of EESA or TARP, or were otherwise contrary to the public interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating or prosecuting a violation of, or enforcing or implementing, a statute, rule, regulation, or order, where the Department becomes aware of a potential violation of civil or criminal law or regulation, rule or order.

2. To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual who is the subject of the record.

3. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction and Agency Touhy regulations are followed. See 31 CFR 1.8 *et seq.*

4. To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist.

5. To disclose information to the United States Department of Justice (''DOJ''), for the purpose of representing or providing legal advice to the Department in a proceeding before a

court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components;

and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

6. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Department officers and employees.

7. To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise that there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

8. In limited circumstances, for the purpose of compiling or otherwise refining records that may be disclosed to the public in the form of summary reports or other analyses provided on a Department Web site.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in both an electronic format, including (but not limited to) on magnetic tapes, disks, microfiche, and hardcopy paper reports.

RETRIEVABILITY:

These records may be retrieved by various combinations of employer name, individual name, position and/or level of compensation.

SAFEGUARDS:

Data in electronic format is encrypted or password protected. Direct access is limited to employees within the Office of Financial Stability whose duties require access. The building where the records are maintained is locked after hours and has a 24-hour security guard. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

The records will be maintained indefinitely until a record disposition schedule submitted to the National Archives Records Administration has been approved.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Compliance, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Employer.

c. Signature.

d. Contact information.

[Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).]

RECORD ACCESS PROCEDURE:

See ''Notification procedure,'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification procedure,''' above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the individual's employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–17684 Filed 7–23–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of 4 individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 4 individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on July 20, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury

consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On July 20, 2009, OFAC designated 4 individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

1. COSTILLA SANCHEZ, Jorge Eduardo (a.k.a. COSTILLA SANCHEZ, Jorge); Mexico; Andador 2 o 20, No. 13, Fraccionamiento Los Sauces, Matamoros, Tamaulipas, Mexico; Playa Mocamba y Playa Encantada No. 14, Colonia Playa Sol, Matamoros, Tamaulipas, Mexico; Calle Sierra Nevada No. 633, Fraccionamiento Fuentes, Seccion Lomas, Reynosa, Tamaulipas, Mexico; DOB 01 Aug 1971; Alt. DOB 06 Jan 1971; Alt. DOB 01 Jun 1971; Alt. DOB 06 Jun 1971; POB Mexico; Citizen Mexico; Nationality Mexico; Electoral Registry No. CSSNJR71010628H801 (Mexico); (INDIVIDUAL) [SDNTK].

2. CARDENAS GUILLEN, Ezequiel (a.k.a. CARDENAS GUILLEN, Antonio Ezequiel); Calle Maples Y Abeto, Fraccionamiento Las Arboleras, Matamoros, Tamaulipas, Mexico; Calle Cerro de Tepeyac No. 33, Colonia Lucio Blanco, Matamoros, Tamaulipas, Mexico; DOB 05 Mar 1962; POB Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. CAGE620305HTSRLZ08 (Mexico); (INDIVIDUAL) [SDNTK].

3. LAZCANO LAZCANO, Heriberto, Mariano Zavala 51, Seccion 16, Matamoros, Tamaulipas, Mexico; Ciudad Miguel Aleman, Tamaulipas, Mexico; DOB 25 Dec 1974; Alt. DOB 25 Jan 1974; Alt. DOB 01 Jan 1970; POB Hidalgo, Mexico; Alt. POB Pachuca, Hidalgo, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LALH741225HHGZZR03 (Mexico); R.F.C. LALH741225 (Mexico); (INDIVIDUAL) [SDNTK].

4. TREVINO MORALES, Miguel (a.k.a. TREVINO MORALES, Miguel Angel); Calle Veracruz 825, Nuevo Laredo, Tamaulipas, Mexico; Calle Mina No. 6111, Nuevo Laredo, Tamaulipas, Mexico; Calle Nayarit 3404, en la esquina de Nayarit y Ocampo, Nuevo Laredo, Tamaulipas, Mexico; Calle 15 de Septiembre y Leandro Valle, Nuevo Laredo, Tamaulipas, Mexico; Avenida Tecnologico 17, entre Calle Pedro Perezo Ibarra y Fraccionamiento Tecnologica, Nuevo Laredo, Tamaulipas, Mexico; Amapola 3003, Col. Primavera, Nuevo Laredo, Tamaulipas, Mexico; Rancho Soledad, Anahuac, Nuevo Leon, Mexico; Rancho Rancherias, Anahuac, Nuevo Leon, Mexico; Reynosa, Tamaulipas, Mexico; DOB 28 Jun 1973; Alt. DOB 18 Nov 1970; Alt. DOB 25 Jan 1973; Alt. DOB 15 Jul 1976; POB Nuevo Laredo, Tamaulipas, Mexico; Alt. POB Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. TRMM730628 (Mexico); (INDIVIDUAL) [SDNTK].

Dated: July 20, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–17683 Filed 7–23–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–21092a–c)]

Agency Information Collection (Survey of Chronic Gastrointestinal Illness in Persian Gulf Veterans) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 24, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (10–21092a–c)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (10–21092a–c).''

SUPPLEMENTARY INFORMATION:

Titles:

a. Survey of Chronic Gastrointestinal Illness in Persian Gulf Veterans, VA Form 10–21092a.

b. VA Research Consent Form (Cases), VA Form 10–2109b.

c. VA Research Consent Form (Control), VA Form 10–2109c.

OMB Control Number: 2900–New (10–21092a–c).

Type of Review: New collection.

Abstract: Approximately 25 percent of military troops who were deployed in the first Persian Gulf War returned with persistent gastrointestinal symptoms, typical of diarrhea-predominant irritable bowl syndrome. The data collected from the survey will assist VA in determining whether chronic gastrointestinal illness in Persian Gulf Veterans was caused by the presence of bacteria in the intestines and whether eradication of these bacteria reduces symptoms of chronic diarrhea.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2009 at pages 21853–21854.

Affected Public: Individuals or households.

Estimated Total Annual Burden:

a. Survey of Chronic Gastrointestinal Illness in Persian Gulf Veterans, VA Form 10–21092a—3,000 hours.

b. VA Research Consent Form (Cases), VA Form 10–21092b—41 hours.

c. VA Research Consent Form (Control), VA Form 10–21092c—31 hours.

Estimated Average Burden Per Respondent:

a. Survey of Chronic Gastrointestinal Illness in Persian Gulf Veterans, VA Form 10–21092a—45 minutes.

b. VA Research Consent Form (Cases), VA Form 10–21092b—15 minutes.

c. VA Research Consent Form (Control), VA Form 10–21092c—10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. Survey of Chronic Gastrointestinal Illness in Persian Gulf Veterans, VA Form 10–21092a—4,000.

b. VA Research Consent Form (Cases), VA Form 10–21092b—165.

c. VA Research Consent Form (Control), VA Form 10–21092c—189.

Dated: July 21, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–17658 Filed 7–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VR&E Survey)]

Agency Information Collection Activities (VR&E Employment of Individuals With Severe Injuries Study) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 24, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (VR&E Survey)'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (VR&E Survey).''

SUPPLEMENTARY INFORMATION:

Title: Vocational Rehabilitation and Employment (VR&E) Service Employment of Individuals with Severe Injuries Study.

OMB Control Number: 2900–New (VR&E Survey).

Type of Review: New collection.

Abstract: The mission of the VR&E program is to provide vocational rehabilitation services that will assist veterans to obtain and keep suitable employment consistent with their capabilities and interests or to achieve independence in their activities of daily living. The study will be used to determine whether the VR&E program is meeting the needs of severely disabled veterans and whether rehabilitation services are effective as they can be by identifying the factors that hinder and assist achieving long-term career employment for severely disabled veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2009, at pages 21854–21855.

Affected Public: Individuals or Households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 200.

Dated: July 21, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–17659 Filed 7–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0090]

Agency Information Collection (Application for Voluntary Service) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 24, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0090'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0090.

SUPPLEMENTARY INFORMATION:

Title: Application for Voluntary Service, VA Form 10–7055.

OMB Control Number: 2900–0090.

Type of Review: Extension of a currently approved collection.

Abstract: Individuals expressing interest in volunteering at a VA medical center complete VA Form 10–7055 to request placement in the nationwide VA Voluntary Service Program. VA will use the data collected to place applicants in assignments most suitable to their special skills and abilities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 18, 2009 at page 23246.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 8,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 32,000.

Dated: July 21, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–17662 Filed 7–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (HEC)]

Proposed Information Collection (Health Eligibility Center (HEC) Correspondence Satisfaction Letter and Customer Modality Survey): Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate and improve patient satisfaction program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 22, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–New (HEC)'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Health Eligibility Center (HEC) Correspondence Satisfaction Letter, FL 10–491.

b. Customer Modality Satisfaction Survey, VA Form 10–0151.

OMB Control Number: 2900–New (HEC).

Type of Review: New collection.

Abstract: The HEC goal is to respond to Veterans correspondence, addressing their concerns in a concise and understandable manner. The correspondence letter will allow Veterans an opportunity to provide anonymous feedback on how well the HEC addressed their concerns. HEC will use Veterans feedback to improve the correspondence process. The Customer Modality Survey will be used to focus on how VA employees assess the needs of Veterans and outline internal processes to improve services prior to Veterans receiving care such as pre-registration support and claim processing.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA FL 10–0151—11,551 hours.

b. VA Form 10–491—83,677 hours.

Estimated Average Burden Per Respondent:

a. VA FL 10–0151—4.2 minutes.

b. VA Form 10–491—23 minutes.

Frequency of Response:

a. VA FL 10–0151—1.53.

b. VA Form 10–491—1.9.

Estimated Number of Respondents:

a. VA FL 10–0151—107,851.

b. VA Form 10–491—114,889.

Total Annual Responses:

a. VA FL 10–0151—165,012.

b. VA Form 10–491—218,289.

Dated: July 21, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–17661 Filed 7–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (21–526b)]

Agency Information Collection (Pre-Discharge Compensation Claim) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 24, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (21–526b)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–New (21–526b).''

SUPPLEMENTARY INFORMATION:

Title: Veteran's Supplemental Claim Application, VA Form 21–526b.

OMB Control Number: 2900–New (21–526b).

Type of Review: New collection.

Abstract: Veterans who were denied a claim under Application for Compensation or Pension and wish to request an increase in benefit and/or a claim for a new service-connected condition must complete VA Form 21–526b to file a supplemental claim for disability compensation or to reopen a previously denied claim. VA will use

the data to assist veterans in their claim for compensation.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2009, at page 21854.

Affected Public: Individuals or households.

Estimated Annual Burden: 16,667.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 200,000.

Dated: July 21, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–17660 Filed 7–23–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (10–0470)]

Agency Information Collection Activities (Veterans Industries Consumer Satisfaction Survey) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 24, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900—New (10–0470)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900—New (10–0470).''

SUPPLEMENTARY INFORMATION:

Title: Veterans Industries Consumer Satisfaction Survey, VA Form 10–0470.

OMB Control Number: 2900—New (10–0470).

Type of Review: New collection.

Abstract: VA will use the data collected on VA Form 10–0470 to gain a better understanding of veterans' satisfaction with Veteran Industries Rehabilitation agency's services. It is intended to provide a model as a national norm, so that agencies could evaluate their performances against a standard.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2009 at page 21852.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 40.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 120.

Dated: July 21, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–17663 Filed 7–23–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
July 24, 2009

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 241
Proposed Amendment to Municipal Securities Disclosure; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 241

[Release No. 34–60332; File No. S7–15–09]

RIN 3235–AJ66

Proposed Amendment to Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and interpretation.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is publishing for comment proposed amendments to Rule 15c2–12 under the Securities Exchange Act of 1934 (''Exchange Act'') relating to municipal securities disclosure. The proposal would amend certain requirements regarding the information that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide to the Municipal Securities Rulemaking Board (''MSRB''). Specifically, the proposed amendments would require a broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has agreed to provide notice of specified events in a timely manner not in excess of ten business days after the event's occurrence, would amend the list of events for which a notice is to be provided, and would modify the events that are subject to a materiality determination before triggering a notice to the MSRB. In addition, the amendments would revise an exemption from the rule for certain offerings of municipal securities with put features. The Commission also is providing interpretive guidance intended to assist municipal securities issuers, brokers, dealers and municipal securities dealers in meeting their obligations under the antifraud provisions.

DATES: Comments should be received on or before September 8, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. S7–15–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–15–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Martha Mahan Haines, Assistant Director and Chief, Office of Municipal Securities, at (202) 551–5681; Nancy J. Burke-Sanow, Assistant Director, Office of Market Supervision, at (202) 551–5620; Mary N. Simpkins, Senior Special Counsel, Office of Municipal Securities, at (202) 551–5683; Cyndi N. Rodriguez, Special Counsel, Office of Market Supervision, at (202) 551–5636; Rahman J. Harrison, Special Counsel, Office of Market Supervision, at (202) 551–5663; David J. Michehl, Special Counsel, Office of Market Supervision, at (202) 551–5627; and Steven Varholik, Special Counsel, Office of Market Supervision, at (202) 551–5615, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on a proposed amendment to Rule 15c2–12 under the Exchange Act.[1]

I. Background

A. History of Rule 15c2–12

The Commission has long been concerned with improving the quality, timing, and dissemination of disclosure in the municipal securities market. In an effort to improve the transparency of the municipal securities market, in 1989, the Commission adopted Rule 15c2–12 [2] (''Rule'' or ''Rule 15c2–12'') and an accompanying interpretation modifying a previously published interpretation of the legal obligations of underwriters of municipal securities.[3] As adopted in 1989, Rule 15c2–12 required, and still requires, underwriters participating in primary offerings of municipal securities of $1,000,000 or more to obtain, review, and distribute to potential customers copies of the issuer's official statement. Specifically, Rule 15c2–12 required, and still requires, an underwriter acting in a primary offering of municipal securities: (1) To obtain and review an official statement ''deemed final'' by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitive bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB.

While the availability of primary offering disclosure significantly improved following the adoption of Rule 15c2–12, there was a continuing concern about the adequacy of disclosure in the secondary market.[4] To enhance the quality, timing, and dissemination of disclosure in the

[1] 17 CFR 240.15c2–12.

[2] *Id.*

[3] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) (''1989 Adopting Release'').

[4] In 1993, the Commission's Division of Market Regulation (n/k/a the Division of Trading and Markets) (''Division'') conducted a comprehensive review of many aspects of the municipal securities market, including secondary market disclosure (''1993 Staff Report''). Findings in the 1993 Staff Report highlighted the need for improved disclosure practices in both the primary and secondary municipal securities markets. The 1993 Staff Report found that investors need sufficient current information about issuers and significant obligors to better protect themselves from fraud and manipulation, to better evaluate offering prices, to decide which municipal securities to buy, and to decide when to sell. Moreover, the 1993 Staff Report found that the growing participation of individuals as both direct and indirect purchasers of municipal securities underscored the need for sound recommendations by brokers, dealers, and municipal securities dealers. *See* Commission, Division of Market Regulation, *Staff Report on the Municipal Securities Market* (September 1993) (available at *http://www.sec.gov/info/municipal.shtml*).

secondary municipal securities market, the Commission in 1994 adopted amendments to Rule 15c2–12 (''1994 Amendments'').[5] Among other things, the 1994 Amendments placed certain requirements on brokers, dealers, and municipal securities dealers (''Dealers'' or, when used in connection with primary offerings, ''Participating Underwriters'').

Specifically, Rule 15c2–12, as amended by the 1994 Amendments, prohibits Participating Underwriters from purchasing or selling municipal securities covered by the Rule in a primary offering, unless the Participating Underwriter has reasonably determined that an issuer of municipal securities or an obligated person[6] has undertaken in a written agreement or contract for the benefit of holders of such securities (''continuing disclosure agreement'') to provide specified annual information and event notices to certain information repositories.[7] The information to be provided consists of: (1) Certain annual financial and operating information and audited financial statements (''annual filings'');[8] (2) notices of the occurrence of any of eleven specific events (''event notices'');[9] and (3) notices of the failure of an issuer or other obligated person to make a submission required by a continuing disclosure agreement (''failure to file notices'').[10] The 1994 Amendments also amended Rule 15c2–12 to require the Participating Underwriter to reasonably determine that an issuer of municipal securities or an obligated person has undertaken in the continuing disclosure agreement to provide: (1) Annual filings to each nationally recognized municipal securities information repository (''NRMSIR''); (2) event notices and failure to file notices either to each NRMSIR or to the MSRB; and (3) in the case of states that established state information depositories (''SIDs''), all continuing disclosure documents to the appropriate SID. Finally, the 1994 Amendments amended Rule 15c2–12 to revise the definition of ''final official statement'' to include a description of the issuer's or obligated person's continuing disclosure undertakings for the securities being offered, and of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with undertakings in previous continuing disclosure agreements.

Furthermore, to promote more efficient, effective, and wider availability of municipal securities information to investors and market participants, on December 5, 2008, the Commission adopted amendments to Rule 15c2–12 (''2008 Amendments'') to provide for a single centralized repository, the MSRB, for the electronic collection and availability of information about outstanding municipal securities in the secondary market.[11] In the 2008 Amendments Adopting Release, the Commission stated that the establishment of a single centralized repository will help provide ready and prompt access to continuing disclosure documents to investors and other municipal market participants and will help fulfill the regulatory and information needs of municipal market participants, including Dealers, Participating Underwriters, mutual funds and others.[12] Specifically, the 2008 Amendments require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide the continuing disclosure documents: (1) Solely to the MSRB; and (2) in an electronic format and accompanied by identifying information, as prescribed by the MSRB.[13]

B. Need for Further Amendments to Rule 15c2–12

As discussed below, experience with the operation of the Rule, changes in the municipal market since the adoption of the 1994 Amendments, and recent market events have suggested the need for the Commission to reconsider certain aspects of the Rule, including the exemption for primary offerings of municipal securities in authorized denominations of $100,000 or more which, at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent (''demand securities'').[14] Furthermore, since the adoption of the 1994 Amendments, municipal securities industry participants have raised a number of areas in which the Rule's provisions could be clarified or enhanced and have expressed a desire for additional information about these securities.[15]

[5] *See* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) (''1994 Amendments Adopting Release''). In light of the growing volume of municipal securities offerings, as well as the growing ownership of municipal securities by individual investors, in March 1994, the Commission published the *Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others. See* Securities Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994) (''1994 Interpretive Release''). The Commission intended that its statement of views with respect to disclosures under the federal securities laws in the municipal market would encourage and expedite the ongoing efforts by market participants to improve disclosure practices, particularly in the secondary market, and to assist market participants in meeting their obligations under the antifraud provisions. *Id.*

[6] The term ''obligated persons'' means persons, including the issuer of municipal securities, committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities to be sold in an offering. *See* 17 CFR 240.15c2–12(f)(10).

[7] *See* 17 CFR 240.15c2–12(b)(5)(i)(C). This provision now provides that the annual information and event notices are to be submitted to a single repository, the MSRB. *See infra* note 11 and accompanying text.

[8] 17 CFR 240.15c2–12(b)(5)(i)(A) and (B).

[9] 17 CFR 240.15c2–12(b)(5)(i)(C). Currently, the following events, if material, require notice: (1) Principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of security holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities; and (11) rating changes. In addition, Rule 15c2–12(d)(2) provides an exemption from the application of paragraph (b)(5) of the Rule with respect to certain primary offerings if, among other things, the issuer or obligated person has agreed to a limited disclosure obligation. *See* 17 CFR 240.15c2–12(d)(2). As discussed in detail in Section II.C., below, the Commission is proposing to eliminate the materiality determination for certain of these events.

[10] 17 CFR 240.15c2–12(b)(5)(i)(D). Annual filings, event notices, and failure to file notices are referred to collectively herein as ''continuing disclosure documents.''

[11] *See* Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (''2008 Amendments Adopting Release''). *See also* Securities Exchange Act Release No. 58255 (July 30, 2008), 73 FR 46138 (August 7, 2008) (''2008 Proposing Release''). The 2008 Amendments became effective on July 1, 2009. The Commission proposes that the effective date of the proposed amendments discussed herein would be no earlier than three months after any final approval of the proposed amendments, should the Commission adopt these proposed rule amendments.

[12] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR at 76106.

[13] *Id. See also* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (order approving the MSRB's proposed rule change to establish as a component of its central municipal securities document repository, the Electronic Municipal Market Access (''EMMA'') system, the collection and availability of continuing disclosure documents over the Internet for free).

[14] 17 CFR 240.15c2–12(d)(1)(iii).

[15] *See, e.g.,* Letter from Karrie McMillan, General Counsel, Investment Company Institute (''ICI''), to Florence E. Harmon, Secretary, Commission (July 25, 2008) (available at *http://www.sec.gov/comments/s7-13-08/s71308-44.pdf*); comments of participants in the 2001 SEC Municipal Market Roundtable—''Secondary Market Disclosure for the 21st Century,'' (available at *http://www.sec.gov/info/municipal/roundtables/thirdmuniround.htm*) (Leslie Richards-Yellen, Principal, The Vanguard Group: ''* * * what I'd like to see change the most

Continued

Since the adoption of the 1994 Amendments, the amount of outstanding municipal securities has more than doubled—to almost $2.7 trillion.[16] Notably, despite this large increase in the amount of outstanding municipal securities, direct investment in municipal securities by individuals remained relatively steady from 1996 to 2008, ranging from approximately 35% to 39% of outstanding municipal securities.[17] At the end of 2008, individual investors held approximately 36% of outstanding municipal securities directly and up to another 36% indirectly through money market funds, mutual funds, and closed end funds.[18] There is also substantial trading volume in the municipal securities market. According to the MSRB, almost $5.5 trillion of long and short term municipal securities were traded in 2008 in nearly 11 million transactions.[19] Further, the municipal securities market is extremely diverse, with approximately 50,000 state and local issuers of these securities. In addition, municipal bonds can and do default. In fact, at least 917 municipal bond issues went into monetary default during the 1990s with a defaulted principal amount of over $9.8 billion.[20] Bonds for healthcare, multifamily housing, and industrial development, together with land-backed debt, accounted for more than 80% of defaulted dollar amounts.[21] In 2007, a total of $226 million in municipal bonds defaulted (including both monetary and covenant defaults).[22] In 2008, 140 issuers defaulted on $7.6 billion in municipal bonds.[23]

At the time the Rule was adopted in 1989, municipal securities with put or demand features were relatively new. Approximately $13 billion of variable rate demand obligations (''VRDOs'')[24] were issued in 1989.[25] However, by 2008, new issuances of VRDOs had grown to approximately $115 billion,[26] with trading in VRDOs representing approximately 38% of trading volume of all municipal securities.[27] Many issuers and other obligated persons are reported to have converted their municipal auction rate securities (''ARS'')[28] to securities with other interest rate modes (as provided in related trust indentures),[29] such as VRDOs, or refunded or otherwise refinanced their ARS in order to reduce the unusually high interest rates on ARS caused by turmoil in the ARS market.[30] This conversion or refinancing appears to have contributed to the increased volume of new issues of VRDOs in 2008[31] and was accompanied by an increased number of investors in VRDOs, with some investors holding these securities for long periods of time.[32] There has also been an increase in the trading volume of VRDOs. As the size and complexity of the VRDO market and the number of investors has grown, so have the risks associated with less complete disclosure. In addition, during the fall of 2008, the VRDO market experienced significant volatility.[33] Moreover, there have been concerns expressed by representatives of the primary purchasers of VRDOs—money market funds—that suggest that the exemption in Rule 15c2–12 for these securities may no longer be justified.[34] All of these developments highlight the need for the Commission to consider whether improvements should be made regarding the availability to investors of important information regarding demand securities.

As a result of the changes in the VRDO market, the Commission believes that investors and other municipal market participants today should be able to obtain ongoing continuing disclosure information regarding demand securities in order to make more knowledgeable investment decisions, to effectively manage and monitor their investments, and thereby be better able to protect themselves from

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is the inclusion of securities that have been carved out of Rule 15c2–12. I would like securities such as money market securities to be within the ambit of Rule 15c2–12. In addition, I'd like to see the eleven material events be expanded. The first eleven were very helpful. The ICI drafted a letter and we've added another twelve for the industry to think about and cogitate on * * *,'' and Dianne McNabb, Managing Director, A.G. Edwards & Sons, Inc: ''I think that in summary, we could use more specificity as far as what needs to be disclosed, the timeliness of that disclosure, such as the financial statements, more events, I think that we would agree that there are more events * * *''); and National Federation of Municipal Analysts, *Recommended Best Practices in Disclosure for Variable Rate and Short-Term Securities,* February, 2003 (recommendations for continuing disclosures of specified information) (available at *http://www.nfma.org/publications/short_term_030207.pdf).*

[16] According to statistics assembled by the Securities Industry and Financial Markets Association (''SIFMA''), the amount of outstanding municipal securities grew from approximately $1.26 trillion in 1996 to $2.69 trillion at the end of 2008. *See SIFMA Outstanding U.S. Bond Market Debt* (available at *http://www.sifma.org/research/pdf/Overall_Outstanding.pdf*).

[17] *See* SIFMA, *Holders of U.S. Municipal Securities* (available at *http://www.sifma.org/research/pdf/Holders_Municipal_Securities.pdf*) (''SIFMA Report'').

[18] *Id.*

[19] *See* MSRB, *Real-Time Transaction Reporting, Statistical Patterns in the Municipal Market, Monthly Summaries 2008* (available at *http://www.msrb.org/msrb1/TRSweb/MarketStats/statistical_patterns_in_the_muni.htm*).

[20] *See* Standard and Poor's, *A Complete Look at Monetary Defaults in the 1990s* (June, 2000) (available at *http://www.kennyweb.com/kwnext/mip/paydefault.pdf*) (''Standard and Poor's Report''). *See also* Moody's Investors Service, *The U.S. Municipal Bond Rating Scale: Mapping to the Global Rating Scale And Assigning Global Scale Ratings to Municipal Obligations* (March 2008) (available at *http://www.moodys.com/cust/content/content.ashx?source=StaticContent/Free%20pages/Credit%20Policy%20Research/documents/current/102249_RM.pdf*) (regarding municipal defaults of Moody's rated municipal securities).

[21] *See* Standard and Poor's Report, *supra* note 20.

[22] *See* Joe Mysak, *Subprime Finds New Victim as Muni Defaults Triple,* Bloomberg News, May 30, 2008.

[23] *See* Joe Mysak, *Municipal Defaults Don't Reflect Tough Times: Chart of Day,* Bloomberg News, May 28, 2009 (also noting that since 1999, issuers have defaulted on $24.13 billion in municipal bonds).

[24] VRDOs principally are demand securities.

[25] *See Two Decades of Bond Finance: 1989–2008,* The Bond Buyer/Thomson Reuters 2009 Yearbook 4 (Matthew Kreps ed., Source Media, Inc.) (2009).

[26] *Id.*

[27] According to the MSRB, trading volume in VRDOs in 2008 was approximately $2.1 trillion. Total trading volume in 2008 for all municipal securities was approximately $5.5 trillion. *See* e-mail between Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, and Harold Johnson, Deputy General Counsel, MSRB, May 28, 2009 (confirming 2008 trading volume in VRDOs and trading volume for municipal securities).

[28] Auction rate securities are not demand securities.

[29] ''Interest rate modes'' is the term used to refer collectively to the various forms in which offerings that include variable rate demand obligations may typically be issued or converted. Such ''multi-modal'' bonds typically include a variety of optional forms (modes), such as fixed interest rate, variable interest rates of different lengths (*e.g.,* daily, weekly or monthly interest rate resets), auction rate, and commercial paper.

[30] *See, e.g.*, Press Release, Dormitory Authority State of New York, *DASNY Moving Clients Out of Auction Rate Securities* (March 26, 2008) (available at *http://www.dasny.org/dasny/news/2008/080326moving.php*); Press Release, Office of Chief Financial Officer, District of Columbia, *Over $100 Million Saved: $10 Million This Fiscal Year by CFO Debt Management Strategy* (May 27, 2008) (available at *http://newsroom.dc.gov/show.aspx/agency/cfo/section/2/release/13845)*; Henry J. Gomez, *Bond Failures Could Mean Millions In Lost Interest*, Cleveland Plain Dealer, March 4, 2008, at B3; Laura Brost, *Citizens to Cut its Borrowing Cost*, Orlando Sentinel, March 14, 2008, at C3; and Matt Krantz, *Credit Crisis Forces Museums to be Creative; Skittish Bond Investors Meant Their Interest Costs Were Getting Out of Hand*, USA TODAY, April 17, 2008, at 4B.

[31] According to Thomson Reuters, VRDO issuances in 2008 were much higher than in 2007—approximately $115 billion in 2008 vs. $50 billion in 2007. No ARS were reported to have been issued during the same period in 2008. *See Two Decades of Bond Finance: 1989–2008*, The Bond Buyer/Thomson Reuters 2009 Yearbook 7 (Matthew Kreps ed., Source Media, Inc.) (2009).

[32] *See infra* note 45 and accompanying text.

[33] *See* Diya Gullapalli, *Crisis On Wall Street: Muni Money-Fund Yields Surge—Departing Investors Send 7-Day Returns Over 5%*, Wall Street Journal, September 27, 2008; Andrew Ackerman, *Short-Term Market Dries Up: Illiquidity Leads to Lack of Bank LOCs*, The Bond Buyer, October 7, 2008. (''The reluctance of financial firms to carry VRDOs is evident in the spike in the weekly [SIFMA] municipal swap index, which is based on VRDO yields and spiked from 1.79% on Sept. 10 to 7.96% during the last week of the month. It has since declined somewhat to 5.74%.'').

[34] *See supra* note 15 and accompanying text.

misrepresentations and fraudulent activities. Accordingly, the Commission proposes to modify the exemption in the Rule, as discussed below, for demand securities [35] by requiring Participating Underwriters to reasonably determine that the issuer or obligated person of demand securities has undertaken in a written agreement to provide continuing disclosure documents to the MSRB.

In addition, the Commission proposes to require Participating Underwriters to reasonably determine that the issuer or obligated person has contractually agreed to provide notice of specified events within a certain time frame, amend the list of events that would trigger an issuer's or other obligated person's obligation under its continuing disclosure agreement to submit an event notice to the MSRB, and amend the Rule to modify those events that would be subject to a materiality determination before triggering a notice to the MSRB.[36] As discussed below, the Commission believes that these proposed changes would, among other things, help Participating Underwriters satisfy their obligations and help improve the availability of timely and important information to investors of municipal securities. In addition, in line with the objectives behind the Commission's prior revisions to Rule 15c2–12 and the 2008 Amendments, these proposed amendments are designed to help deter fraud and manipulation in the municipal securities market by prohibiting the underwriting and recommendation of transactions in municipal securities for which adequate information is not available on an ongoing basis.

II. Description of the Proposed Amendments to Rule 15c2–12

A. Modification of the Exemption for Demand Securities

Rule 15c2–12(d) provides an exemption for a primary offering [37] of municipal securities in authorized denominations of $100,000 or more, if such securities, at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.[38] Demand securities qualify for this exemption. The Commission now proposes to delete the current exemption for demand securities in paragraph (d)(1)(iii) and add language in new paragraph (d)(5) so that paragraphs (b)(5) [39] and (c) [40] of the Rule also would apply to a primary offering of demand securities.

The Commission believes that its experience with the operation of the Rule and market changes since the adoption of the 1994 Amendments have suggested a need to modify the exemption relating to demand securities as described. The effect of this proposed amendment would be to eliminate the current exemption of demand securities from the requirement that a Participating Underwriter reasonably determine that the issuer or obligated person has undertaken, in a continuing disclosure agreement, to provide continuing disclosure documents to the MSRB. As noted above, when this exemption was adopted VRDOs were relatively new and did not represent a large proportion of the market.[41] However, by 2008, the amount of issuances of VRDOs was approximately $115 billion [42] and trading volume of VRDOs exceeded 38 percent of all municipal securities.[43] The Commission observes that an unusually high volume of VRDOs were issued in 2008.[44] The increase in the amount of issuances and trading volume of VRDOs seem to indicate that more investors own such securities. Furthermore, despite their periodic ability to tender VRDOs to the respective issuer for repurchase, some investors in VRDOs appear to hold these securities for long periods of time [45] and would be better able to protect themselves against manipulation and fraud if they were able more easily to access information about important events, such as those listed in paragraphs (b)(5) and (c) of the Rule.

Accordingly, the increased amount of VRDO issuances, high VRDO trading volume, increased number of investors in VRDOs,[46] and some investors' tendency to hold these securities for long periods of time highlight the risks associated with less information being available and suggest a need to take

[35] *See* 17 CFR 240.15c2–12(d)(1)(iii). Specifically, the Commission proposes to eliminate the exemption for primary offerings of demand securities contained in paragraph (d)(1)(iii) of the Rule and to add new paragraph (d)(5) to the Rule. Paragraph (d)(5) of the Rule, as proposed, would exempt primary offerings of demand securities from all of the provisions of the Rule except those relating to a Participating Underwriter's obligations pursuant to paragraph (b)(5) of the Rule and relating to recommendations by brokers, dealers, and municipal securities dealers pursuant to paragraph (c) of the Rule. As a result of these proposed changes, Participating Underwriters, in connection with a primary offering of demand securities, would need to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement with respect to the submission of continuing disclosure documents to the MSRB. In addition, brokers, dealers and municipal securities dealers recommending the purchase or sale of demand securities would need to have procedures in place that provide reasonable assurance that they would receive prompt notice of event notices and failure to file notices. *See* 17 CFR 240.15c2–12(c).

[36] As discussed below in Section II.F., the Commission is aware that undertakings by issuers and obligated persons that were entered into prior to the effective date of any final amendments would be different from those entered into on or after the effective date of any final amendments.

[37] *See* Rule 15c2–12(f)(7) for a definition of primary offering. 17 CFR 240.15c2–12(f)(7).

[38] 17 CFR 240.15c2–12(d)(1)(iii).

[39] As noted above, Rule 15c2–12(b)(5) requires a Participating Underwriter, before purchasing or selling municipal securities in connection with an offering of municipal securities, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of the holders of municipal securities, to provide annual filings, material event notices, and failure to file notices (*i.e.*, continuing disclosure documents) to the MSRB. *See* 17 CFR 240.15c2–12(b)(5). *See also supra* note 11.

[40] Rule 15c2–12(c) requires a broker, dealer, or municipal securities dealer that recommends the purchase or sale of a municipal security to have procedures in place that provide reasonable assurance that it will receive prompt notice of any material event and any failure to file annual financial information regarding the municipal security. *See* 17 CFR 240.15c2–12(c).

[41] *See supra* note 25 and accompanying text.

[42] *See supra* note 25 and accompanying text.

[43] *See supra* note 27 and accompanying text.

[44] *See supra* notes 30 and 31 and accompanying text.

[45] Telephone call between Heather Traeger, Associate Counsel, Securities Regulation, Capital Markets, ICI, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, on July 14, 2009.

[46] The recent increased investment interest and activity in VRDOs may be attributable, in part, to the recent turmoil in the market for ARS, which began in February 2008. *See* MSRB Notice 2008–09 (February 19, 2008) (''Recent downgrades of municipal bond insurers and other short-term liquidity concerns have created extreme volatility in the market for municipal Auction Rate Securities. There also have been an unprecedented number of 'failed auctions,' meaning that investors who chose to liquidate their positions through the auction process were not able to do so.'') (available at *http://www.msrb.org/msrb1/whatsnew/2008-09.asp*). *See also* Anthony P. Inverso, *2008 First-Half Municipal Market Review: The End of Securities and Bond Insurance As We Know It?* Building Futures, New Jersey Educational Facilities Authority (June 2008) (stating that as downgrades to bond insurer ratings grew, so did the rates on ARS. Further stating that by the end of the first half of 2008, nearly half of all auction rate securities will have been converted or redeemed, mainly in the form of more predictable fixed rate debt or variable rate secured by a bank letter of credit.) (available at *http://www.njefa.com/njefa/pdf/newsletter/NJEFA%20Building%20futures%20newsletter%20June%202008%20Vol.%207,%20No.%201.pdf*); and Adrian D'Silva, Haley Gregg, and David Marshall, *Explaining the Decline in the Auction Rate Securities Market*, Chicago Fed Letter, The Federal Reserve Bank of Chicago (November 2008) (stating that the rash of failed auctions in the ARS markets starting in February 2008 has prompted issuers to consider a variety of potential solutions, including: Finding buyers for ARSs in the secondary market; converting ARSs to variable-rate demand notes; and replacing ARSs with short term debt funding.) (available at *http://www.chicagofed.org/publications/fedletter/cflnovember2008_256.pdf*). *See also supra* note 30.

measures designed to help improve the availability of important information to investors in this considerable segment of the municipal market. Representatives of money market funds have discussed their difficulty or, on some occasions, their inability to obtain the information that they believe is necessary to oversee their investments in demand securities.[47] Modification of the exemption for demand securities, as further discussed below, would help improve the availability of continuing disclosures about these securities, not only to institutional investors, such as mutual funds, that acquire demand securities for their portfolios, but also to individual investors who own, or who may be interested in owning, demand securities, and would help them make better informed investment decisions, and thereby better protect themselves.

Further, the Commission notes that the exemption for demand securities, which was included in the Rule when Rule 15c2–12 was adopted in 1989, was intended to respond to concerns expressed by commenters ''that applying the provisions of the [Proposed] Rule to variable rate demand notes, or similar securities, might unnecessarily hinder the operation of this market, if underwriters were required to comply with the provisions of the Proposed Rule on each tender or reset date.'' [48] The exemption in the original Rule was intended to ensure that the remarketings would not be affected by application of paragraphs (a) and (b)(1)–(4) of the Rule, which require Participating Underwriters to review an official statement that the issuer ''deems final'' before it may bid for, purchase, offer or sell an offering; to deliver a preliminary official statement or final official statement to any potential customer, upon request; and to contract with the issuer to receive an adequate number of the final official statement to accompany confirmation statements and otherwise fulfill its regulatory responsibilities. Although remarketings of VRDOs may be primary offerings,[49] the Commission did not impose paragraphs (a) and (b)(1)–(4) of the Rule on Participating Underwriters of each remarketing—of which hundreds could occur on the same day—because it potentially would have made it impractical and unduly burdensome for Participating Underwriters to comply with these Rule provisions.[50]

Generally, there are no continuing disclosure agreements in place with respect to VRDOs, because primary offerings of these securities are exempt from the Rule.[51] Under the proposed amendments, the Participating Underwriter of a primary offering of VRDOs would need to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement with respect to the submission to the MSRB of continuing disclosure documents. The proposed amendment modifying the exemption for VRDOs would apply to any initial offering of VRDOs occurring on or after the effective date of any final amendments that the Commission may adopt. In addition, the proposed amendment also would apply to any remarketing of VRDOs that are primary offerings [52] occurring on or after the effective date of any final amendments that the Commission may adopt, including any such remarketing of VRDOs that initially were issued prior to any such effective date. Consequently, the initial issuance of VRDOs, and any remarketing that is a primary offering of VRDOs, following the effective date of any final amendments would require the Participating Underwriter to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement reflecting the proposed new provisions of the Rule.

The Commission, however, preliminarily believes that the effect of the application of paragraphs (b)(5) and (c) of the Rule to VRDOs would not be significantly burdensome for Participating Underwriters in connection with the initial issuance and remarketing of VRDOs following the effective date of any final amendments. If the amendments are adopted, any primary offering (including a remarketing) that occurs on or after the effective date of the Rule would require a Participating Underwriter or a Participating Underwriter serving as a remarketing agent [53] for a particular VRDO issue to make a determination that an issuer or obligated person has entered into a continuing disclosure agreement for that issue reflecting the new provisions of the Rule. The Participating Underwriter or the remarketing agent (who often served as the underwriter in the initial issuance of the VRDOs) would need to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement in which it undertakes to provide continuing disclosure documents to the MSRB. However, once the Participating Underwriter has made such a determination for a particular VRDO issue, it would be aware of the existence of the continuing disclosure agreement reflecting the proposed amendment, and thus would easily be able to make the necessary determination for remarketings of that issue occurring thereafter.[54] Furthermore, remarketing agents who did not previously participate in a remarketing could confirm that the issuer has entered into an undertaking in conformity with the proposed amendment by obtaining an official statement from the issuer (which by definition must include a description of the issuer's undertakings),[55] from the MSRB (under its program that makes official statements for nearly every offering of municipal securities available on the Internet from the MSRB's EMMA system),[56] or from a

[47] *See, e.g.,* comments of Leslie Richards-Yellen, Principal, The Vanguard Group, transcript of the 2001 Municipal Market Roundtable—''Secondary Market Disclosure for the 21st Century'' (available at *http://www.sec.gov/info/municipal/roundtables/thirdmuniround.htm*) (''* * * what I hope more than anything is that variable rate demand obligations become within the Rule 15c2–12 disclosure regime * * * put yourself in the position of a fund, we have on one hand Rule 15c2–12, which is very helpful and it sets the floor of what kind of information must be delivered for a secondary market, * * *. But on the other hand, mutual funds are bound by Rule 2a–7 and that says for short-term obligations what we must find for every security, and Rule 2a–7 has legal requirements that we must fulfill in order to buy the securities, and * * * to make these findings we have to make our own determination, we can't rely on rating agencies, we do this all in house.''). *See also supra* note 15.

[48] *See* 1989 Adopting Release, *supra* note 3, 54 FR at 28808, n. 68.

[49] *See supra* note 37.

[50] *See* 1994 Amendments Adopting Release, *supra* note 5. The Commission notes that, in the 1994 Amendments Adopting Release, it did not address the application of paragraph (b)(5) of the Rule to remarketing of VRDOs, including the practicality and burdens for Participating Underwriters to comply with this provision. The 1994 Amendments did not reconsider any of the exemptions contained in the Rule. As discussed above, since that time, there have been significant developments in the market related to demand securities.

[51] There may, however, be continuing disclosure agreements for VRDOs that were initially issued in an interest rate mode, such as a fixed rate mode, subject to the Rule that were subsequently converted to VRDOs in accordance with the provisions of the related indenture.

[52] 17 CFR 240.15c2–12(f)(7).

[53] A remarketing agent is a broker-dealer responsible for reselling to new investors securities (such as VRDOs) that have been tendered for purchase by their owner. The remarketing agent also typically is responsible for resetting the interest rate for a variable rate issue and also may act as tender agent. *See* MSRB, *Municipal Securities Rulemaking Board Glossary,* Second Edition (January 2004) (defining ''remarketing agent'') (available at *http://www.msrb.org/msrb1/glossary*).

[54] *See infra* Section III. for a reaffirmation of the Commission's interpretations regarding Participating Underwriters' obligations under Rule 15c2–12.

[55] 17 CFR 240.15c2–12(f)(3).

[56] *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (order

variety of vendors. In addition, a remarketing agent could obtain a copy of the continuing disclosure agreement from the issuer or obligated person at the time that it enters into a contract to act as a remarketing agent.

According to an industry commentator, some rating agencies recommend that variable-rate debt not exceed 20 percent of the total debt outstanding of governmental issuers.[57] If governmental issuers follow this recommendation, it would be likely that state and local government issuers with VRDOs would have some fixed rate securities outstanding, at least some of which likely would be subject to continuing disclosure agreements under Rule 15c2–12. Because any existing continuing disclosure agreements for those other outstanding securities would obligate such issuers and obligated persons to provide annual filings, event notices and failure to file notices with respect to their outstanding securities, the Commission does not anticipate that the modification of the exemption for demand securities in the proposed amendments would increase significantly the obligation that they would incur to provide continuing disclosure documents to the MSRB.[58] Furthermore, the Commission notes that some annual filings, such as audited financial statements, are often prepared by issuers and obligated persons in the ordinary course of their business. In such cases, the obligation incurred by an issuer or obligated person to provide to the MSRB information that it has already prepared should be small.[59] Issuers and obligated persons of demand obligations that have not previously issued such securities, however, would be entering into a continuing disclosure agreement for the first time and would incur some costs to provide continuing disclosure documents electronically to the MSRB.[60]

For the reasons stated above, the Commission believes that application of paragraphs (b)(5) and (c) of the Rule would be appropriate in the case of demand securities. The Commission preliminarily believes that any additional burden on Participating Underwriters, issuers or obligated persons, the MSRB or others would be justified by the improved availability of information to investors in demand securities, so that investors in these securities could make better informed investment decisions and thereby better protect themselves from misrepresentations and fraudulent activities. Investors now would have better access to baseline information and material events regarding VRDOs. The availability of such information also would assist brokers, dealers and municipal securities dealers in fulfilling their responsibilities to their customers,[61] such as disclosing material facts about transactions and securities; making suitable recommendations in transactions for municipal securities; and complying with other sales practice obligations.[62]

The Commission requests comment on whether it is appropriate to revise the Rule's exemption for demand securities by proposing to apply paragraphs (b)(5) and (c) of the Rule to the offering of demand securities.[63] Further, the Commission requests comment regarding investors' and other municipal market participants' need for continuing disclosure information relating to demand securities. In addition, the Commission requests comment on the extent to which the proposed amendment would provide benefits to investors and other municipal market participants. The Commission also requests comment regarding the effect of the proposed amendment on Participating Underwriters, issuers and obligated persons, and others.

B. Time Frame for Submitting Event Notices Under a Continuing Disclosure Agreement

The Commission proposes to modify paragraph (b)(5)(i)(C) of the Rule to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit event notices to the MSRB[64] ''in a timely manner not in excess of ten business days after the occurrence of the event,'' instead of ''in a timely manner'' as the Rule currently provides. The Commission proposes a similar revision to the limited undertaking in paragraph (d)(2)(ii)(B) of the Rule[65] to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit event notices to the MSRB[66] ''in a timely manner not in excess of ten business days after the occurrence of the event,'' instead of ''in a timely manner'' as the Rule currently provides. Therefore, under the proposed amendments, a Participating Underwriter would need to reasonably determine that the continuing disclosure agreement provides for the submission of notices to the MSRB within a period up to and including ten business days after the occurrence of the event. In the 1994 Amendments, the Commission noted that it had not established a specific time frame with respect to ''timely'' because of the wide variety of events and issuer circumstances.[67] The Commission stated that, in general, this determination must take into consideration the time needed to discover the occurrence of the event, assess its materiality, and prepare and disseminate the notice.[68] It has been reported that some event notices have not been submitted until months after the events occurred.[69] The Commission believes that these delays can, among other things, deny investors important information that they need in order to make informed decisions regarding whether to buy or sell municipal securities. More timely information would aid brokers, dealers and municipal securities dealers to be better able to satisfy their obligations to have a reasonable basis to recommend the

approving the MSRB's proposed rule change to make permanent a pilot program for an Internet-based public access portal for the consolidated availability of primary offering information about municipal securities).

[57] *See* Douglas Skarr, *Auction Rate Securities: A Primer For Finance Officers,* Government Finance Review, August 2005.

[58] *See infra* Section V. for a discussion of the collection of information burdens and costs as they relate to the proposed amendment regarding demand securities.

[59] *Id.*

[60] *Id.*

[61] For example, brokers, dealers and municipal securities dealers with access to current information contained in event notices submitted to the MSRB would be able to use such information when deciding whether or not to recommend the purchase or sale of a particular demand security.

[62] *See* MSRB, *Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities,* Interpretative Notice of Rule G–17, dated May 30, 2007 (available at *http://www.msrb.org/msrb1/rules/notg17.htm*).

[63] *See supra* note 35.

[64] *See supra* note 11 and accompanying text.

[65] 17 CFR 240.15c2–12(d)(2)(ii)(B).

[66] *See supra* note 11 and accompanying text.

[67] *See* 1994 Amendments, *supra* note 5, 59 FR at 59601.

[68] *Id.*

[69] *See, e.g.,* Elizabeth Carvlin, *Trustee for Vigo County, Ind., Agency Taps Reserve Fund for Debt Service,* The Bond Buyer, April 2, 2004, page 3 (reporting the filing of a material event notice regarding a draw on debt service reserve fund that occurred in February); Alison L. McConnell, *Two More Deals Under Audit By TEB Office,* The Bond Buyer, April 5, 2006 (event notice of tax audit filed nine months after audit was opened); Susanna Duff Barnett, *IRS Answers Toxic Query; Post 1986 Radioactive Waste Debt Not Exempt,* The Bond Buyer, November 2, 2004 (material event notice filed October 29, 2004 regarding IRS technical advice memorandum dated August 27, 2004 that bonds issued to finance certain radioactive solid waste facilities were taxable; related preliminary adverse determination letter was issued in January, 2002); and Michael Stanton, *IRS: Utah Pool Bonds Taxable; Issuer Disputes Facts of Case,* The Bond Buyer, December 8, 1997 (issuer's receipt of August, 1997 IRS technical advice memorandum concluding certain bonds were taxable was disclosed on December 5, 1997).

purchase or sale of municipal securities and aid investors in determining whether the price they pay or receive for their transactions is appropriate, and thereby better protect themselves from misrepresentations and other fraudulent activities.

The Commission believes that longer delays in providing notice of the events set forth in paragraph (b)(5)(i)(C) of the Rule undermine the effectiveness of the Rule. Indeed, market participants have emphasized the importance of the prompt availability of such information.[70] In addition to helping to reduce opportunities for fraudulent activities, the Commission anticipates that, in providing for a maximum time frame within which event notices should be disclosed under a continuing a disclosure agreement, the proposed amendment should foster the availability of up-to-date information about municipal securities, thereby promoting greater transparency and investor confidence in the municipal securities market as a whole.

The Commission notes that, with respect to Participating Underwriters, the proposed amendment simply would require them to reasonably determine that issuers and obligated persons have contractually agreed to submit event notices ''in a timely manner not in excess of ten business days after the occurrence of the event,'' rather than in a ''timely manner.'' On the other hand, there would be a significant benefit to investors and municipal market participants, who would be able to obtain information about municipal securities within a specific time frame of an event's occurrence. Indeed, while issuers and obligated persons under continuing disclosure agreements entered into prior to the effective date of any final amendments that the Commission may adopt already would have committed to submit event notices in a timely manner, the proposed amendment would help to make the timing of such submissions more certain in the case of issuers and obligated persons that enter into continuing disclosure agreements on or after the effective date of any final amendments that the Commission may adopt.[71]

The Commission believes that the proposed change regarding the time frame for submission of event notices would continue to provide an issuer or obligated person with adequate time to become aware of the event and, pursuant to its undertaking, submit notice of the event's occurrence to the MSRB. In proposing that event filings be provided ''in a timely manner not in excess of ten business days after the occurrence of the event,'' the Commission intends to strike a balance between the need for such information to be disseminated promptly and the need to allow adequate time for an issuer or other obligated person to become aware of the event and to prepare and file such a notice. The Commission preliminarily believes that the proposed ten business day time frame would provide a reasonable amount of time for issuers to comply with their obligations under their continuing disclosure agreements, while also allowing event notices to be made available to investors, underwriters, and other market participants in a timely manner.

By their nature, the events currently listed in (and proposed to be added to) subparagraph (b)(5)(i)(C) of the Rule are significant and should become known to the issuer or obligated person expeditiously.[72] For example, some events, such as payment defaults, tender offers and bankruptcy filings, generally involve the issuer's or obligated person's participation.[73] Other events, such as the failure of a credit or liquidity provider to perform, are of such importance that an issuer or obligated person likely would become aware of such events within the proposed ten business day time frame[74] or would expect an indenture trustee, paying agent or other transaction participant to bring the event to the issuer's or obligated person's attention within the proposed time frame for submission of event notices.[75] Although a few events, such as rating changes, are not directly within the issuer's control, the Commission expects that issuers and obligated persons usually would become aware of the events specified in paragraph (b)(5)(i)(C) of the Rule within the proposed ten business day time frame.[76] Accordingly, the Commission believes that the proposed ten business day time frame within which issuers or obligated persons would submit notices pursuant to a continuing disclosure agreement would provide an adequate amount of time for issuers or obligated persons to prepare and submit event notices to the MSRB. While the proposed maximum time period for submitting event notices would be ten business days, in many instances it is likely that a notice could be submitted in fewer than ten business days. This, however, would depend upon the particular facts and circumstances of each event.

The Commission requests comment concerning the ability of issuers and obligated persons to obtain information regarding the occurrence of events currently specified in, and that the proposed amendments would add to, paragraph (b)(5)(i)(C) of the Rule, in sufficient time to prepare and file a notice of such an occurrence in a timely manner not in excess of ten business days. If commenters believe that the time frame that would be set forth in continuing disclosure agreements for submission of event notices should be longer or shorter, they should provide suggestions for the appropriate time and the reasons for their views. For example, should the time frame be four business days, which is generally commensurate with the time period required by Form 8–K?[77] Would a shorter period of time raise difficulties for smaller municipal

[70] *See, e.g.,* National Federation of Municipal Analysts, *Recommended Best Practices in Disclosure for General Obligation and Tax-Supported Debt* (December 2001) (''Any material event notices, including those required under SEC Rule 15c2–12, should be released as soon as practicable after the information becomes available.'') (available at *http://www.nfma.org/disclosure.php*); Peter J. Schmitt, Letter to the Editor, *To the Editor: MuniFilings.com: The Once and Future Edgar?,* The Bond Buyer, October 9, 2007, Commentary, Vol. 362 No. 32732, at 36 (''We suggest * * * that the true problem is issuer compliance * * * filing issues are the sole cause of lack of transparency and disclosure availability in the industry. These filing issues include * * * late filing, * * * '').

[71] The Commission notes that the proposed ten business day time frame would not apply to continuing disclosure agreements entered into with respect to primary offerings that occurred prior to the effective date of any final amendments that the Commission may adopt.

[72] *See supra* note 9 for a description of events currently contained in Rule 15c2–12(b)(5)(i)(C); *See infra* Section II.E. for a description of events proposed to be added to the Rule.

[73] In addition, issuer or obligated person involvement is often required for substitution of credit or liquidity providers; modifications to rights of security holders; release, substitution, sale of property securing repayment of the securities; and optional redemptions. *See* Form Indenture and Commentary, National Association of Bond Lawyers, 2000.

[74] For example, issuers or obligated persons should have direct knowledge of principal and interest payment delinquencies, receipt of preliminary or proposed determinations of taxability from the IRS, tender offers that they initiate, and bankruptcy filings.

[75] The Commission believes that indenture trustees generally would be aware of principal and interest payment delinquencies; material non-payment related defaults, unscheduled draws on credit enhancements reflecting financial difficulties; the failure of credit or liquidity providers to perform; and adverse tax opinions or events affecting the tax-exempt status of the security.

[76] Those issuers or obligated persons required by Section 13(a) or Section 15(d) of the Exchange Act to report certain events on Form 8–K (17 CFR 249.308) would already make such information public in the Form 8–K. The Commission believes that such persons should be able to file material event notices, pursuant to the issuer's or obligated person's undertakings, within a short time after the Form 8–K filing. *See* 15 U.S.C. 78m and 78*o*(d).

[77] 17 CFR 249.308.

issuers and obligated persons, and if so, why would it? Furthermore, comment is requested regarding the need to establish such a time frame for submissions of event notices. Should the trigger for the ten business day time frame begin when the issuer or obligated person knew or should have known of the occurrence of the event, rather than the actual occurrence of the event? Comment is also requested on whether an issuer's need to monitor for events that would trigger an event notice would impose any new burdens or costs. Comment is requested on whether the proposal would help to reduce untimely submissions of event notices, or whether untimely submissions of event notices are caused by other factors. Comment is also requested on whether there are alternative ways to modify a Participating Underwriter's obligations that would result in more prompt availability of event notices to investors.

C. Materiality Determinations Regarding Event Notices

In the 1994 Proposing Release, the Commission stated that the list of events in paragraph (b)(5)(i)(C) of the Rule consists of recognized material events that reflect on the creditworthiness of the issuer of the municipal security or any significant obligor, as well as on the terms of the securities that they issue.[78] The Commission is proposing to delete the condition in paragraph (b)(5)(i)(C) of the Rule that presently provides that notice of *all* of the listed events need be made only ''if material.'' In connection with the proposed deletion of the materiality condition, the Commission has reviewed each of the Rule's current specified events to determine whether or not a materiality determination should be retained for that particular event and preliminarily believes such a determination is still appropriate for certain listed events, as discussed below.[79] As a result of this proposed change, for those events listed in paragraph (b)(5)(i)(C) that are not proposed to contain the ''if material'' condition, the Participating Underwriter must reasonably determine that the issuer or other obligated person has agreed to submit event notices to the MSRB whenever such an event occurs.

The Commission now believes, based on its experience with the operation of paragraph (b)(5)(i)(C) of the Rule, that notice of certain events currently listed in paragraph (b)(5)(i)(C) need not be preceded by a materiality determination and always should be available because of their importance to investors and other market participants. These events include: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes. The availability of this information to investors would enable them to better protect themselves from misrepresentations and fraud. Furthermore, the availability of this information would assist brokers, dealers and municipal securities dealers to satisfy their obligation to have a reasonable basis on which to recommend municipal securities.

The Commission believes that the proposal to remove the materiality condition for the aforementioned events should not alter greatly the current practice. Because of the significant nature of these events and their importance to investors in the marketplace, the Commission believes that issuers and obligated persons would already be providing notice of most, if not all, such events pursuant to existing continuing disclosure agreements.

More specifically, the Commission believes that notice of principal and interest payment delinquencies should always be provided to aid investors in protecting themselves from fraud and to assist brokers, dealers and municipal securities dealers in satisfying their obligation to have a reasonable basis to recommend municipal securities. Even a small payment default may indicate that an issuer or other obligated party has begun to experience financial distress. Further, a payment default often adversely affects the market value of a municipal security. Similarly, unscheduled draws on debt service reserves reflecting financial difficulties and unscheduled draws on credit enhancements reflecting financial difficulties often have an adverse impact on the market value of a security and therefore should always be available to investors to protect against fraud and to other market participants to satisfy their securities law obligations. The Commission believes that investors should always be provided with these notice of events because such events likely indicate that the financial condition of a municipal securities issuer or obligor has deteriorated and therefore that there is potentially an increased risk of a payment default or, in the case of default by an issuer or other obligated party that results in payment of the securities by the provider of credit enhancement (such as a standby letter of credit), premature redemption. Bondholders and other market participants also would be concerned with the sufficiency of the amount of debt service and other reserves available to support an issuer or obligor through a period of temporary difficulty, along with the present financial condition of the provider of any credit enhancement.

The identity of credit or liquidity providers and their ability to perform is important to investors. The Commission understands that credit ratings of municipal securities are typically based on the higher of the issuer's (or other obligor's) rating or the rating of the credit provider.[80] With occasional exceptions, credit enhancement is obtained from a credit provider with a higher rating than that of the issuer or other obligor. When a credit enhancer such as a bond insurer is downgraded, the market value and liquidity of the securities that it has enhanced generally decline.[81] Similarly, the identity and

[78] *See* Securities Exchange Act Release No. 33742 (March 9, 1994), 59 FR 12759, 12761–2 (March 17, 1994).

[79] The discussion in this section pertains to materiality determinations for events currently specified in paragraph (b)(5)(i)(C) of the Rule. For events proposed to be added to the Rule, whether a materiality determination would be included is noted in the discussion below for each such proposed event.

[80] *See, e.g., Municipal Structured Finance Criteria Report: Dual-Party Pay Criteria for Long-Term Ratings on LOC-Supported U.S. Public Finance Bonds*, Fitch Ratings, Public Finance, June 11, 2009 (noting that ''U.S. public finance bonds supported by bank letters of credit (LOC) are assigned long-term ratings one-to-two notches higher than the rating on the LOC provider or the underlying rating of the bond, whichever is higher, if [certain] conditions hold true[.]'')

[81] *See, e.g.*, Alistair Varr, *Moody's Warning Ripples Through Municipal Bond Market*, MarketWatch, December 17, 2007 (noting that ''when a security is cut to AA from AAA, the value of the bond would go down.'') (available at *http://www.marketwatch.com/story/moodys-bond-insurer-call-has-unprecedented-effect-on-muni-market*); Jeffrey R. Kosnett, *Why Municipal Bonds Are Stumbling, Kiplinger.com*, December 4, 2007 (stating that municipal bonds normally meriting a triple-B or single-A rating being upgraded to triple-A status as a result of having bond insurance) (available at *http://www.kiplinger.com/columns/balance/archive/2007/balance1204.html*); ''[T]he municipal industry chose to use bond insurance to enhance an issuer's lower credit rating to that of the higher insurance company's rating. The last 18 months have exposed the risks of this choice when insurance company downgrades, and auction-rate security failures, forced numerous leveraged investors to unwind massive amounts of debt into an illiquid secondary market. The consequence was that issuers of new debt were forced to pay extremely high interest rates and investors were confused by volatile evaluations of their investments.'' *Enhancing Investor Protection and the Regulation of Securities Markets: Before the S.*

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ability of a liquidity provider to perform is typically critical to investors. Investors in VRDOs, for example, depend on liquidity providers to satisfy holders' right to ''put'' their securities in a timely manner. As a result, the Commission preliminarily believes that notice of the substitution of credit or liquidity providers, or their failure to perform, should always be provided in an event notice to aid investors to protect against fraud and brokers, dealers and municipal securities dealers to satisfy their obligation to have a reasonable basis to recommend municipal securities.

Further, the Commission preliminarily believes, for the same purposes, that defeasances and rating changes should always be available to investors and other market participants. Defeasances secured by a pool of U.S. Treasury securities sufficient to pay principal and interest commonly result in a bond receiving the highest rating[82] and thus can affect the security's market value. Rating changes more generally may affect the market price of the security, making it important both to bondholders and to investors who may be considering the purchase of a particular security.

The Commission, however, believes that a materiality determination should be retained for other events currently listed in paragraph (b)(5)(i)(C) because the occurrence of such events, in some circumstances, may not be of such importance to investors that they always should be disclosed. Experience with the operation of the Rule has not provided information to propose a change at this time, and the Commission continues to believe that information about these events may, depending on the facts and circumstances, not need to be available to investors and other market participants in all instances to accomplish the Rule's goals.[83] Therefore, the Commission proposes to modify the text of subparagraph (b)(5)(i)(C) and subparagraphs (b)(5)(i)(C)(2), (7), (8), and (10) of the Rule, with regard to the Participating Underwriter's obligations, to specify that a determination of materiality would be retained for event notices regarding non-payment related defaults; modifications to rights of security holders; bond calls; and the release, substitution, or sale of property securing repayment of the securities.

The Commission requests comment on the proposed amendment to delete the phrase ''if material'' in the case of notices for the following events: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes. Are these events of such importance to investors that their occurrence always should be disclosed? Are there situations in which notice of the occurrence of these events would not need to be available to investors to protect themselves from fraud and to brokers, dealers and municipal securities dealers to aid them in satisfying their obligations under the securities laws? Are there other events listed in the Rule as to which the materiality determination should be eliminated because their occurrence always should be disclosed to investors? Should a materiality determination be retained for event notices regarding non-payment related defaults; modifications to rights of security holders; bond calls; and the release, substitution, or sale of property securing repayment of the securities? Does the proposed amendment to eliminate the materiality determination for certain events create or eliminate any burdens on issuers?

D. Amendment Relating to Event Notices Regarding Adverse Tax Events Under a Continuing Disclosure Agreement

The Commission proposes to modify paragraph (b)(5)(i)(C)(6) of the Rule, which presently requires Participating Underwriters reasonably to determine that the issuer or obligated person has entered into a continuing disclosure agreement to submit a notice for ''[a]dverse tax opinions or events affecting the tax-exempt status of the security,'' if material.[84] The proposed amendment would revise paragraph (b)(5)(i)(C)(6) of the Rule to provide specifically for the disclosure of adverse tax opinions, the issuance, by the Internal Revenue Service (''IRS''), of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of securities, or other events affecting the tax-exempt status of the security.[85] As stated above, such disclosure would be made to the MSRB.

In adopting the 1994 Amendments, the Commission noted that ''an 'event' affecting the tax-exempt status of the security may include the commencement of litigation and other legal proceedings, including an audit by the Internal Revenue Service. * * *''[86] While the Commission continues to believe that ''events affecting the tax-

Comm. on Banking, Housing and Urban Affairs, 111th Cong. __, March 10, 2009 (statement of Thomas Doe, Founder and CEO Municipal Market Advisors) (available at *http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=faf91bea-ca58-4bc1-873d-33739dbb4f76&Witness_ID=64207b41-3512-414b-8085-ae4b71520b0a*).

[82] Such defeasances are known as ''advance refundings'' or ''pre-refundings''. *See* MSRB, *Municipal Securities Rulemaking Board Glossary*, Second Edition (January 2004) (defining ''advance refunding'' and ''defeasance'') (available at *http://www.msrb.org/msrb1/glossary*). *See also* MSRB, *EMMA Education Center, FAQ: ''How am I affected if my bond is advance refunded?''* (available at *http://emma.msrb.org/EducationCenter/FAQs.aspx?topic=AboutARD*); Fitch Ratings, *Municipal Structured Finance Criteria Report: Guidelines for Rating Prerefunded Municipal Bonds*, April 2, 2009 (available at *http://www.fitchratings.com/corporate/reports/report_frame.cfm?rpt_id=431370&sector_flag=&marketsector=3&detail=*); and Moody's Investors Service, *Rating Methodology: Refunded Bonds*, June, 2007 (available at: *http://www.moodys.com/moodys/cust/research/MDCdocs/29/2006700000441141.pdf?doc_id=2006700000441141&frameOfRef=municipal*).

[83] For example, a release of substitution of property may involve a small amount of property that is not particularly valuable or important to the business of the issuer or obligated person, and minor modifications to the rights of securities holders are often made pursuant to the provisions of trust indentures that allow them only if they are not materially adverse to the interests of bondholders.

[84] 17 CFR 240.15c2–12(b)(5)(i)(C)(6).

[85] The Commission understands that when determining whether interest on a bond issue is taxable, the IRS first issues an audit letter to the issuer (which may indicate whether or not IRS staff suspects a problem with the particular transaction). In the event that, as a result of the audit, IRS staff believes that it has found a reasonable basis to declare the interest on a bond issue under audit to be taxable, IRS staff issues a Notice of Proposed Issue (IRS Form 5701–TEB), which it recently began to use instead of a letter referred to as a ''preliminary determination of taxability.'' If, following subsequent discussions with, and review of additional documents provided by, the entity under audit, IRS staff continues to believe that interest on the bonds should be declared taxable and no settlement has been reached, it issues a letter to the issuer referred to as a ''proposed determination of taxability.'' Unless appealed to the Office of Appeals of the IRS, a proposed determination of taxability becomes a final determination of taxability in 30 days. Final determinations of taxability are not appealable to the IRS and may not be appealed in a federal court by an issuer. A bondholder who has received a tax assessment on account of such a final determination may take an appeal in federal court. *See* Internal Revenue Manual (''IRM'') 4.81.14 to 4.81.1.19. *See also* IRM 4.18.5.9 (setting forth Office of Tax-Exempt Bonds' current practice regarding the issuance of a Notice of Proposed Issue (IRS Form 5701–TEB) in instances in which preliminary determinations of taxability would previously have been issued).

[86] *See* 1994 Amendments, *supra* note 5, 59 FR at 59600.

exempt status of the security'' in paragraph (b)(5)(i)(C)(6) of the Rule [87] can include an audit, and thus an audit should be the subject of an event notice when it is material, the Commission recognizes that not all audits are indications of a risk to the tax-exempt status of interest on a municipal security. The IRS Office of Tax Exempt Bonds, through its examination classification process, initiates examinations in various market segments with a view toward ensuring broad examination coverage of the various tax-exempt bond segments.[88] However, determinations by the IRS, such as proposed and final determinations of taxability and Notices of Proposed Issue (IRS Form 5701–TEB), indicating that the IRS believes the securities are or may be taxable and has begun a formal administrative process in that regard, indicate that there could be a significant risk to the tax-exempt status of a security. Accordingly, the Commission believes that proposed and final determinations of taxability and Notices of Proposed Issue (IRS Form 5701–TEB) by the IRS relating to the taxability of a municipal security are of such importance that they always should be disclosed pursuant to a continuing disclosure agreement.

Investors consider the tax-exempt status of a municipal security, specifically the issuance of such IRS notices, to be of great importance when making investment decisions.[89] Because the interest rate on a tax-exempt municipal security generally is significantly lower than the interest rate on a comparable taxable security because of the value of the municipal security's tax exemption, investors are sensitive to factors that could affect the value of the return that they would receive from such an investment, such as the tax exempt status of interest earned on a municipal security that they currently own or may purchase.[90] A determination by the IRS that interest may, in fact, be taxable on a municipal security purchased as tax-exempt not only could reduce the security's market value, but also could adversely affect each investor's federal and, in some cases, state income tax liability.[91] The tax-exempt status of a municipal security is also important to many mutual funds whose governing documents, with certain exceptions, limit their investment to tax-exempt municipal securities.[92] Mutual funds may liquidate securities that become taxable, which could have adverse consequences for the fund and its holders. Therefore, retail and institutional investors alike are extremely interested in events that could adversely affect the tax-exempt status of the bonds that they own or may purchase.

Subsequent to a 1993 Report of the General Accounting Office,[93] the IRS established an Office of Tax-Exempt Bonds with more than 60 staff members devoted to audits and tax collections related to tax-exempt municipal securities.[94] Staff of the Office of Tax-Exempt Bonds has identified numerous offerings in which bonds sold as tax-exempt were determined to be taxable.[95] As a result, the IRS has collected a significant amount of taxes—generally through settlements with issuers and obligated persons, but also with bondholders.[96] Furthermore, staff of the IRS Office of Tax-Exempt Bonds has established a Bondholder Unit to increase the staff's efficiency in identifying bondholders in the case of bonds determined to be taxable.[97]

[87] 17 CFR 240.15c2–12(b)(5)(i)(C)(6).

[88] E-mail communication among Clifford Gannett, Director, Office of Tax-Exempt Bonds, Robert E. Henn, Manager, Office of Tax-Exempt Bonds Field Operations, Office of Tax-Exempt Bonds, IRS, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, on December 9, 2008. Information in e-mail confirmed in telephone conversation between Robert E. Henn, Manager, Office of Tax-Exempt Bonds Field Operations, Office of Tax-Exempt Bonds, IRS, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, on May 29, 2009.

[89] *See In the Matter of Neshannock Township School District*, Securities Act Release No. 8411 and Securities Exchange Act Release No. 49600, AP 3–11461 (April 22, 2004) (settled action) (''A substantial risk to the tax-exempt status of securities which have been sold as tax-exempt is a material item.''); *In the Matter of Rauscher Pierce Refsnes, Inc., Dain Rauscher Inc., and James R. Feltham*, Securities Act Release No. 7844 and Securities Exchange Act Release No. 42644, A.P. File No. 3–10182 (April 6, 2000) (settled action) (''* * * an essential feature of the 1992B [Certificates of Participations] was the tax-exempt status of the interest component to be paid to investors''); and *In re: County of Orange, California; Orange County Flood Control District and County of Orange, California Board of Supervisors*, Securities Act Release No. 7260 and Securities Exchange Act Release No. 36760, AP 3–8937 (January 1, 1996) (identifying tax-exempt status of offering of securities as a material fact). *See also, e.g.,* Lori Trawinski, *et al.*, The Bond Market Association, *Secondary Market Effects of Municipal Bond Tax Audit Disclosure*, at 10 (August 2002) (settled action) (available at *http://www.gfoa.org/downloads/Tax_Audit_Study_August_2002.pdf*) (study examining the effect of IRS audit announcements on the secondary market for municipal bonds and discussing the concerns of investors and other municipal market participants); Lynn Hume, *Panel: This Top 10 List Doesn't Have Buy-Side Players Laughing*, The Bond Buyer, May 5, 2006, NFMA Annual Conference, Vol. 356 No. 32375, at 7 (''* * * and issuers' failures to disclose Internal Revenue Service notices that bonds are taxable are among the '10 top things that drive the buy side crazy,' analysts and lawyers said * * * during a panel session at the National Federation of Municipal Analysts' 23rd annual meeting . * * *'').

[90] *See, e.g.*, Lori Trawinski, et al., The Bond Market Association, *Secondary Market Effects of Municipal Bond Tax Audit Disclosure*, at 10 (August 2002); Kathleen Pender, *State Energy Bonds Could Be Hard Sell; Treasurer says most won't be tax-exempt*, The San Francisco Chronicle, February 21, 2001, at D1; and John Gin, *Compare apples to apples when looking at bonds; Tax-equivalent yield is the test*, The Times-Picayune, September 5, 2007, Money; Money Watch, at 1; and SIFMA, Calculator: Tax-Free vs. Taxable Yield Comparison (available at *http://www.investinginbonds.com/learnmore.asp?catid=8&subcatid=80*).

[91] For example, investors in such a circumstance may have to include interest on such a security as income when computing their federal income taxes for current and future tax years and may have to pay additional taxes for prior tax years.

[92] *See* Investment Company Institute, *Frequently Asked Questions About Money Market Funds* (available at *http://www.ici.org/home/faqs_money_funds.html#TopOfPage*) (''Typically, tax-exempt money market funds, which seek to pay dividends that are exempt from federal income tax and/or state income tax, invest in instruments issued by state and local governments ('municipal securities').'').

[93] *See* U.S. General Accounting Office, *Tax Policy and Administration—Improvements for More Effective Tax-Exempt Bond Oversight,* Report of the General Accounting Office to the Chairman, Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Operations, House of Representatives, May 10, 1993 (available at *http://archive.gao.gov/t2pbat5/149322.pdf*) (which recommended, in part, that the existing bond audit program be redirected and that program staffing levels, locations and training needs be reassessed in light of the program's future).

[94] E-mail from Clifford Gannett, Director, Office of Tax-Exempt Bonds, IRS, to Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, dated August 26, 2008. Information in e-mail confirmed in telephone conversation between Robert E. Henn, Manager, Office of Tax-Exempt Bonds Field Operations, Office of Tax-Exempt Bonds, IRS, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, on May 29, 2009.

[95] E-mail communications among Clifford Gannett, Director, Office of Tax-Exempt Bonds, Robert E. Henn, Manager, Office of Tax-Exempt Bonds Field Operations, Office of Tax-Exempt Bonds, IRS, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, dated August 26, 2008 and December 9, 2008. Information in e-mail confirmed in telephone conversation between Robert E. Henn, Manager, Office of Tax-Exempt Bonds Field Operations, Office of Tax-Exempt Bonds, IRS, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, on May 29, 2009.

[96] *Id.*

[97] According to the 2008 Work Plan for the IRS Office of Tax-Exempt Bonds, the bondholder identification process is expected to be initiated no later than the date a proposed adverse determination is issued (available at *http://www.irs.gov/pub/irs-tege/teb_fy08_work_plan.pdf*). *See, e.g.,* Susanna Duff Barnett and Lynn Hume, *IRS to Warn Mutual Funds of Taxability Letters Being Sent to Over 12 Companies,* The Bond Buyer, March 30, 2004, Washington, at 1 (''More mutual funds can be expected to be contacted in the future.'') and Susanna Duff Barnett, *A Growing Caseload; More Challenges Face IRS Bond Office in '05,* The Bond Buyer, December 23, 2004, Washington, Vol. 350 No. 32036, at 1 (''One result

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IRS staff has indicated [98] that during the period from April 2007 through July 2008, approximately 80% of the audits that received a preliminary determination of taxability (now IRS Form 5701–TEB [99]) and were resolved were settled through closing agreements with the IRS. During the same period, of those cases that received a proposed determination of taxability and were closed: approximately 25% were settled through a closing agreement with IRS; approximately 37.5% received final determinations that the bonds were taxable; and approximately 37.5% were appealed to the IRS Office of Appeals. In light of the foregoing discussion, the Commission believes that the risk of taxability following the issuance of proposed and final determinations of taxability and Notices of Proposed Issue (IRS Form 5701–TEB) is significant.

Despite the possibility that these events could adversely affect the tax-exempt status of the bonds that investors own or may purchase and thus could significantly affect the pricing of those municipal securities,[100] it has been reported that notices regarding such tax events are not always filed.[101] The Commission believes that the issuance of proposed and final determinations of taxability and Notices of Proposed Issue (IRS Form 5701–TEB) by the IRS is important information that should be made available to investors and therefore should be part of a Participating Underwriter's obligation to determine whether such events are included in a continuing disclosure agreement.

The Commission requests comment on the proposed amendment to modify the provision of the Rule regarding the submission of a notice with respect to adverse tax opinions to include the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of the securities, or other events affecting the tax-exempt status of the security. Comment is requested on whether the proposed amendment would further the disclosure of such events and thereby aid investors to protect themselves from misrepresentations and fraud and brokers, dealers and municipal securities dealers to carry out their obligations. The Commission requests comment regarding the extent to which investors and other market participants would find it useful to be informed of the issuance of proposed and final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of securities by the IRS. Commenters should advise whether the proposal would aid investors in their understanding of potential adverse tax consequences that may arise with respect to a particular municipal security. In addition, commenters should address whether such information is important to investors of various types of municipal securities, such as fixed and variable rate securities or demand securities. Should the continuing disclosure agreement specify that a copy of the determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices issued by the IRS be provided to the MSRB, or would a notice of any such determination provide sufficient information to investors? What would be the benefit of disclosing a copy of any such determination? What drawbacks, if any, might such disclosure entail? Should the Rule be amended to require a Participating Underwriter to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement to submit a notice of tax audits? If so, why?

E. Addition of Events To Be Disclosed Under a Continuing Disclosure Agreement

The Commission also proposes to amend paragraph (b)(5)(i)(C) of the Rule by including notice of four additional events the Participating Underwriter must reasonably determine that the issuer or other obligated person has agreed to provide in its continuing disclosure agreement. These would include: (1) Tender offers; (2) bankruptcy, insolvency, receivership or similar proceeding of the obligated person; (3) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material.

1. Tender Offers

The Commission proposes to add tender offers to the list of events in subparagraph (b)(5)(i)(C)(8) of the Rule.[102] Under the proposed amendment, the Participating Underwriter must reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to provide notice of tender

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that has stemmed from the lengthier audits is the IRS' aggressive search for bondholder names earlier in an audit cycle through so-called John Doe summonses and other methods.'').

[98] E-mail from Robert Henn, Manager, Office of Tax-Exempt Bonds Field Operation, IRS, to Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, dated July 14, 2009.

[99] The IRS Office of Tax-Exempt Bonds now issues Notices of Proposed Issue (IRS Form 5701–TEB) in instances in which it previously would have issued preliminary determinations of taxability. E-mail from Clifford Gannett, Director, Office of Tax-Exempt Bonds, IRS, to Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, dated August 26, 2008. Information in e-mail confirmed in telephone conversation between Robert E. Henn, Manager, Office of Tax-Exempt Bonds Field Operations, Office of Tax-Exempt Bonds, IRS, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, on May 29, 2009.

[100] *See, e.g.,* Susanna Duff Barnett and Lynn Hume, *IRS to Warn Mutual Funds of Taxability Letters Being Sent to Over 12 Companies,* The Bond Buyer, March 30, 2004, Washington, at 1 (''The bondholder community has been saying for years that they want prompt disclosure of audits and issuer discussions with the IRS relating to the tax-exempt status of the bonds.''—Tom Metzold, president and portfolio manager at Eaton Vance Management; ''It's vital to disclose the risk of taxability to the entire marketplace to protect potential investors.''—Gerard J. Lian, then chairman of the National Federation of Municipal Analysts and vice president and senior analyst at Morgan Stanley Investment Management.); and National Federation of Municipal Analysts, *NFMA releases results of member survey* (November 30, 2001) (available at *http://www.nfma.org/publications/survey_results.pdf*) (''Over 54% of analysts responding to the survey felt that all IRS audits, whether routine, targeted or based on external information, should be disclosed to the market.''). *See also,* Lori Trawinski, *et al.,* The Bond Market Association, *Secondary Market Effects of Municipal Bond Tax Audit Disclosure* (August 2002) (available at *http://www.gfoa.org/downloads/Tax_Audit_Study_August_2002.pdf*) (''This study clearly demonstrates that effect for certain variable-rate tax-exempt bonds, where rates paid by state and local bond issuers have risen significantly when news of the audit is made public. While anecdotal evidence suggests similar effects for long-term, fixed-rate bonds, empirical evidence is inconclusive.'').

[101] *See, e.g.,* Susanna Duff Barnett, *IRS Answers Toxic Query; Post 1986 Radioactive Waste Debt Not Exempt,* The Bond Buyer, November 2, 2004 (material event notice filed October 29, 2004 regarding IRS technical advice memorandum dated August 27, 2004 that bonds issued to finance certain radioactive solid waste facilities were taxable; related preliminary adverse determination letter was issued in January, 2002).

[102] Generally, municipal securities are not subject to Commission rules governing tender offers, including Rule 13e–4 under the Exchange Act, 17 CFR 240.13e–4, which sets forth disclosure, time periods, and other requirements governing tender offers by issuers. In passing the Williams Act, P.L. 90–439, in 1968, Congress recognized that regulation of tender offers was necessary for the purposes of disclosure of material information and substantive protection to investors. *See* Rep. No. 550, 90th Cong., 1st Sess. 3 (1967) at 1.

offers to the MSRB.[103] The Commission believes that notice of the existence of tender offers for municipal securities would help investors to be better able to protect themselves from misrepresentations and fraud, including deciding whether to tender their holdings to the issuer or its representative, and assist brokers, dealers and municipal securities dealers to carry out their obligations. Tender offers typically require an investor to respond within a limited time frame.[104] Tender offers may provide an avenue of liquidity to investors, such as during periods of market turmoil.[105] The Commission believes that communication of the existence of a tender offer to municipal securities investors is important to assist each investor to make an informed, timely decision whether or not to tender.[106]

Indeed, the recent events in the market for ARS could be seen as an example of the need to provide timely notice within ten business days of a tender offer. Since approximately mid-February of 2008, the market for ARS has experienced severe illiquidity, with consequences to investors who purchased what they may have believed to be liquid, cash equivalent investments.[107] Some issuers and obligated persons have offered to purchase some or all of their outstanding ARS from investors who desire liquidity.[108] Notices about these tender offers may not always be widely disseminated. Had this information been available from the then-existing information repositories, it may have become more widely known to the market through these repositories and through private information vendors and news media who obtain information from the repositories.

During a tender offer for municipal securities, such as ARS, some investors may be left in doubt whether their securities were the subject of the offer. To determine the facts about such offers, it often is necessary for investors to seek the information independently by contacting the issuer or other obligated person directly. Some investors may not have been able to learn of the existence of a tender offer for municipal securities that they hold, in a timely fashion and, in such a case, may not have been able to tender their securities. The Commission believes that the proposed amendment requiring Participating Underwriters to reasonably determine that such notices are provided pursuant to a continuing disclosure agreement would help ensure the consistent availability of this information to investors when they make investment decisions, and thereby assist them to be better able to protect themselves from misrepresentation and fraud.

The Commission believes that the proposed amendment requiring Participating Underwriters to reasonably determine that issuers and other obligated persons have agreed in their continuing disclosure agreements to provide notice of tender offers to the MSRB [109] would result in this information being more widely available to investors through the MSRB. In addition, the proposal to revise paragraph (b)(5)(i)(C) of the Rule to specify that event notices be submitted in a timely manner not in excess of ten business days after the event's occurrence, as discussed above, would help to improve the timely availability of tender offer information so that investors would be afforded the opportunity to make more informed decisions whether to hold or tender their securities. The Commission believes that its proposal regarding notice of tender offer disclosures would enhance the ability of issuers, other obligated persons, or others making such tender offers to effectively communicate their offers to a wider constituency of bondholders and thereby would increase the likelihood that those holders would be informed of the offer.

The Commission requests comment regarding all aspects of the proposed amendment of subparagraph (b)(5)(i)(C)(8) of the Rule to include tender offers. For example, would specifying in Rule 15c2–12 the submission to the MSRB of a notice of a tender offer assist issuers and other obligated persons in providing tender offer information to bondholders on a wider basis? Is there a benefit or drawback to adding tender offers as an event item in subparagraph (b)(5)(i)(C)(8) of the Rule? Would the proposal help prevent fraud? If so, would the proposed amendment to modify subparagraph (b)(5)(i)(C)(8) to include notice of tender offers to the MSRB be an appropriate avenue to address this objective? If a tender offer is open for a short period of time, is the proposed ''ten business day'' standard appropriate in the context of a tender offer or would another time frame be more appropriate? The Commission seeks comment regarding whether tender offers should be added to this provision of Rule 15c2–12 and requests suggestions concerning alternative methods to address the concerns stated above with regard to tender offers for municipal securities. In addition, comment is requested about the existence and prevalence of exchange offers for municipal securities and whether exchange offers also should be included in this provision. Further, the Commission requests comment regarding whether it should specify that the Participating Underwriter reasonably determine that the issuer or obligated person has agreed to provide particular information regarding a tender offer that should be included in such notices, such as: The offer price; change in offer price; withdrawal rights; identity of the offeror; an offeror's ability to finance the offer; conditions to the offer; and the time frame and manner for tendering securities and the method for acceptance (*e.g.*, whether all securities tendered would be accepted and, if not, the method for determining which securities would be accepted). Are there other items of information that

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[103] *See supra* note 11 and accompanying text.

[104] *See* Edward N. Gadsby, *et al., Regulation of Tender Offers, Federal Securities Exchange Act of 1934,* § 7A.03 (David Colby, *et al.,* ed., Matthew Bender & Company, Inc.) (2008) (describing that usually a time limit is placed on a tender offer).

[105] *See, e.g.,* Caitlin Devitt, *Midwest Health Systems Use New ARS Strategy; Two Systems See to Ease ARS Sting,* The Bond Buyer, March 7, 2008, The Regions, Vol. 363 No. 32833, at 1 (describing an issuer's use of a tender offer in its auction rate securities to provide liquidity).

[106] The Commission proposes to retain in Rule 15c2–12(b)(5)(i)(C)(8) the requirement that Participating Underwriters reasonably determine that the issuer or obligated person has agreed in a continuing disclosure agreement to provide to the MSRB notice of bond calls, if material. Thus, unlike with respect to tender offers, the issuer would make a materiality determination with respect to a notice regarding a bond call. The Commission believes that this distinction is appropriate in light of the various types of bond calls (*e.g.,* sinking fund redemptions, extraordinary redemptions, and optional redemptions) that can occur. In addition, the specific amounts to be redeemed and dates for some redemptions (*i.e.,* sinking fund redemptions) are generally included in official statements; therefore, information about such events is already available to investors.

[107] *See, e.g.,* MSRB Notice 2008–09 (February 19, 2008) (reminding brokers, dealers and municipal securities dealers of the application of MSRB disclosure and suitability requirements that apply to all customer transactions in municipal ARS and stating, for example, that it may be a material fact for an investor that an ARS recently was subject to a failed auction); Press Release 2009–127, Commission, *SEC Finalizes ARS Settlements With Bank of America, RBC, and Deutsche Bank* (June 3, 2009) (announcing settlement of SEC's complaints alleging that Bank of America, RBC Capital Markets, and Deutsche Bank failed to make their customers aware of risks in ARS investments.).

[108] *See, e.g.,* notice dated March 28, 2008 of Nationwide Children's Hospital regarding the intent of the hospital to bid for auction rate bonds (available at *https://www.nationalcity.com/content/private-client-group/products-services/create-grow-wealth/pages/documents/2008-03-28.pdf*) and Caitlin Devitt, *Midwest Health Systems Use New ARS Strategy; Two Systems Seek To Ease ARS Sting,* The Bond Buyer, March 7, 2008, The Regions, Vol. 363 No. 32833, at 1.

[109] *See supra* note 11 and accompanying text.

should be included in the notice to help accomplish the purposes of the Rule or would some of the items listed above be unnecessary in this context? If so, please specify which ones and explain the rationale as to why they should or should not be included.

2. The Occurrence of Bankruptcy, Insolvency, Receivership or Similar Events Regarding an Issuer or an Obligated Person

The Commission proposes to add new subparagraph (b)(5)(i)(C)(12) to the Rule to require a Participating Underwriter to reasonably determine that the continuing disclosure agreement requires a notice to be submitted to the MSRB,[110] in the case of bankruptcy, insolvency, receivership or similar event of the obligated person. Rule 15c2–12 would state in a Note following the events specified in subparagraph (b)(5)(i)(C)(12) that, for the purposes of the subparagraph (b)(5)(i)(C)(12), the event would be considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the issuer or obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan or reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.[111] Although issuers and other obligated persons of municipal securities rarely are involved in bankruptcy, insolvency, receivership or similar events, the Commission notes that the occurrence of such events, even if rare, can significantly impact the value of the municipal securities. Information about these events is important to investors and other market participants,[112] and knowledge of the bankruptcy, insolvency, receivership or similar event involving an issuer or other obligated person would allow investors to make informed decisions about whether to buy, sell or hold the municipal security and help prevent fraud.[113] Accordingly, the Commission believes that Participating Underwriters should be required to reasonably determine that such information is provided pursuant to a continuing disclosure agreement.

Under current Rule 15c2–12(b)(5)(i)(C)(2), notice of a material ''non-payment related default'' is to be provided to the MSRB pursuant to a continuing disclosure agreement. The Commission understands that the governing documents for some municipal securities include bankruptcy, insolvency, receivership or similar events involving an issuer or obligated person as a ''non-payment related default.'' [114] However, the Commission further understands that this may not be uniformly the case. The proposed amendment would help improve the availability of notice of bankruptcy, insolvency, receivership, or similar events to all investors. The proposed Note, as described above, is intended to clarify the scope of the event item contained in new subparagraph (b)(5)(i)(C)(12) of the Rule. Moreover, because of the importance of such events to investors and their possible impact on the value of the security, a materiality condition would not be added to proposed subparagraph (b)(5)(i)(C)(12).

The Commission requests comment regarding all aspects of the proposed addition of the event relating to bankruptcy, insolvency, receivership or similar proceeding of the issuer or other obligated person in the Rule. In particular, the Commission requests comment regarding whether there are other similar events or proceedings affecting the financial condition of issuers or other obligated persons that should be included as events requiring notice. The Commission seeks input regarding whether commenters believe that the items contained in proposed subparagraph (b)(5)(i)(C)(12) of the Rule are already addressed by current subparagraph (b)(5)(i)(C)(2) of the Rule and thus whether it is unnecessary to revise the Rule in this regard. The Commission also seeks comment on whether it is appropriate to exclude a materiality determination from this proposed event item.

3. Merger, Consolidation, Acquisition, and Sale of All or Substantially All Assets

The Commission proposes to add subparagraph (b)(5)(i)(C)(13) to the Rule, which would require a Participating Underwriter reasonably to determine that the continuing disclosure agreement provides for the submission of notice to the MSRB [115] of any of the following events with respect to the securities being offered: the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.[116] Although mergers,

[110] *See supra* note 11 and accompanying text.

[111] *See* Form 8–K, Item 1.03 for provisions relating to bankruptcy or receivership that are applicable to entities subject to Exchange Act reporting requirements. 17 CFR 249.308. Item 1.03 of Form 8–K requires the registrant to provide specified items of disclosure on Form 8–K if a receiver, fiscal agent or similar officer has been appointed for a registrant or its parent, in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state and federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority. The proposed Rule 15c2–12 event item is intended to be consistent with the Form 8–K, Item 1.03 provisions applicable to entities subject to the reporting requirements of the Exchange Act.

[112] *See, e.g.*, Letter from Karrie McMillan, General Counsel, ICI, to Florence E. Harmon, Secretary, Commission (September 22, 2008) (''ICI Letter'') (available at *http://www.sec.gov/comments/s7-21-08/s72108-12.pdf*) (suggesting that disclosure information should include information relating to bankruptcy and receivership); National Federation of Municipal Analysts, *Recommended Best Practices in Disclosure for Land Secured Debt Transactions,* June 2000 (available at *http://data.memberclicks.com/site/nfma/DG.BP.landsecuredpractices.doc.pdf*) (recommending best practice disclosures, including disclosures of bankruptcy).

[113] The Commission is aware that bonds are often secured by letters of credit, bond insurance, and other forms of credit enhancement that some have argued could reduce the importance of the creditworthiness of an issuer or obligated person. However, the Commission has long been of the view that information regarding obligated persons generally is material to investors in credit enhanced offerings. *See* 1989 Adopting Release, *supra* note 3, 54 FR at 28812 (''The presence of credit enhancements generally would not be a substitute for material disclosure concerning the primary obligor on municipal bonds.''). *See also* Regulation AB, 17 CFR 229.1100 *et seq.*

[114] *See* National Association of Bond Lawyers (NABL) Form Indenture, dated June 1, 2002 (''NABL Form Indenture'').

[115] *See supra* note 11 and accompanying text.

[116] Although the Commission's disclosure rules that are applicable to reporting companies do not apply to municipal securities, the Commission notes that reporting companies are required to make disclosures upon the occurrence of similar events. *See* Items 1.01 and 2.01 of Form 8–K relating to entry into a material definitive agreement and completion of the acquisition or disposition of assets, respectively, which require entities subject to Exchange Act reporting requirements to disclose specified information within four business days of the occurrence of such events. 17 CFR 249.308. Item 1.01 of Form 8–K requires the registrant to provide specified items of disclosure on Form 8–K if the registrant has entered into a material definitive agreement not made in the ordinary course of business of the registrant, or into any amendment

consolidations, acquisitions, and substantial asset sales are events believed to be rare among governmental issuers,[117] they are not uncommon for obligated persons such as health care institutions, other non-profit entities, and for-profit businesses.[118] Currently, Rule 15c2–12 does not require Participating Underwriters to reasonably determine that continuing disclosure agreements provide for notice of a merger, consolidation, acquisition and substantial asset sales involving such obligated persons, if material.[119] Investors often are not readily able to obtain information about such actions by obligated persons.

The Commission believes that notice of the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material, is important information for investors and market participants.[120] The foregoing events may signal that a significant change in the obligated person's corporate structure could occur or has occurred. In the case of such event, investors may want to have information about the identity and financial stability of the obligated person that would be responsible, following such event, for payment of a municipal security. Further, municipal security holders generally may wish to know about the obligated person's creditworthiness, particularly its ability to support payment of the security following such event when they assess whether to buy, sell or hold a municipal security. A notice regarding such an event, if material, would help further the availability of relevant information to bondholders, market professionals, and the public generally. Accordingly, the Commission believes that it is appropriate to include in the Rule the proposed event item relating to the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions other than pursuant to its terms, if material. The Commission does not believe that all mergers are necessarily of sufficient importance that information on mergers needs to be made available in all instances. For example, a merger could involve the combination of a shell corporation or other small entity into a very large healthcare organization that is a conduit borrower. Such a merger generally would not have a significant impact on the business or financial condition of the larger corporation and, under all of the applicable facts and circumstances, would not be important to investors.

The Commission requests comment regarding all aspects of the proposed addition to the Rule with respect to the consummation or entry into or termination of a definitive agreement involving a merger, consolidation, acquisition, or the sale of all or substantially all of the assets of the obligated person. The Commission requests comment regarding the frequency of such events, and whether this information would be meaningful to investors. The Commission further requests comment on whether a determination of materiality for such events is an appropriate condition to add to this proposed provision. The Commission also requests comments regarding the benefits and drawbacks of this proposed event item.

4. Successor, Additional, or Change in Trustee

Finally, the Commission proposes to add subparagraph (b)(5)(i)(C)(14) to the Rule to require Participating Underwriters to reasonably determine that the issuer or other obligated person has contractually agreed to submit notice to the MSRB [121] when there is an appointment of a successor or additional trustee, or a change of name of a trustee, if material.[122] The proposed amendment reflects the Commission's belief in the importance of an investor's ability to learn of a material change in the trustee's identity, given the significant function and role of the trustee for the holders of the municipal security. The trustee makes critical decisions that impact investors and has a duty to represent the interests of bondholders. For example, the trustee often must determine whether: Proposed amendments to the governing documents of the municipal security are permissible without bondholder consent; parity obligations could be issued; security could be released; or an event of default has occurred.[123] In addition, a trustee is responsible for sending payments to investors and computing applicable interest rates. In some cases, a trustee may be responsible for taking certain actions at the direction of a designated percentage of bondholders.[124] A trustee may also be responsible for providing information requested by investors; often the trustee serves as the issuer's dissemination agent for continuing disclosures. Although the identity of the trustee may have little or no influence on a decision whether to buy or sell a security under normal circumstances, bondholders would need to know the identity of a trustee to be able to contact the trustee for various reasons, particularly when

of such agreement that is material to the registrant. For purposes of Item 1.01, a ''material definitive agreement'' means an agreement that provides for obligations that are material to and enforceable against the registrant, or rights that are material to the registrant and enforceable by the registrant against one or more parties to the agreement, in each case whether or not subject to conditions. Item 2.01 of Form 8–K requires the registrant to provide specified items of disclosure on Form 8–K if the registrant or any of its majority-owned subsidiaries has completed the acquisition or disposition of a significant amount of assets, other than in the ordinary course of business.

[117] *But see* Illinois Finance Authority, which was created on January 1, 2004 following the consolidation of seven existing state authorities. *See* Illinois Finance Authority, *Illinois Finance Authority Bond Program Handbook,* November 1, 2004 (available at *http://www.il-fa.com/policies/BondHandbook11-1-04.pdf*).

[118] For example, according to the American Hospital Association, more than 680 hospital mergers were announced from 1998–2006. *See* American Hospital Association, *TRENDWATCH CHARTBOOK 2008—Trends in the Overall Health Care Market, Chart 2.10: Announced Hospital Mergers and Acquisitions, 1998–2006* (available at *http://www.aha.org/aha/trendwatch/chartbook/2008/08chart2-10.pdf*).

[119] The materiality of the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions must be determined through a review of the particular facts and circumstances of such event. Although in a number of instances such events may be determined to be material, it is possible for such an event to be so sufficiently insignificant that an event notice would not be required. For example, a merger or acquisition of a small entity by one of substantial size may not be material to investors in bonds for which the larger entity is the obligated person, absent other circumstances. On the other hand, such a merger or acquisition may be material to investors in bonds for which the small entity is the obligated person.

[120] *See* ICI Letter, *supra* note 112 (suggesting that disclosure information should include information relating to material acquisitions and dispositions).

[121] *See supra* note 11 and accompanying text.

[122] The materiality of the name change of a trustee must be determined through a review of the particular facts and circumstances of such event. For instance, it is possible for a name change by a trustee to be so minor that an event notice would not be required. For example, a name change such as ''ABC National Bank and Trust Company of XYZ,'' to ''ABC National Bank and Trust Company'' may not be material in the absence of other factors, such as a change of the location at which the trustee can be reached.

[123] *See* NABL Form Indenture, *supra* note 114.

[124] *Id.*

an issuer or other obligated person may be experiencing financial difficulty. These factors support the need for investors to know the identity of the trustee. Yet, the Commission is unaware of any method by which investors, particularly individual investors, presently have a consistent means of obtaining up-to-date information about changes to the identity of the trustee. The proposed amendment therefore would require that the Participating Underwriter reasonably determine that the continuing disclosure agreement provide that a notice concerning a change in the identity of the trustee be submitted to the MSRB.

The Commission requests comment regarding all aspects of the proposed addition of subparagraph (b)(5)(i)(C)(14) concerning the appointment of a successor or additional trustee or the change of name of a trustee. In particular, the Commission requests comment relating to the frequency of such an event and the importance of such information to investors. Commenters should advise whether the continuing disclosure agreement should set forth other information regarding the trustee that should be disclosed and whether a determination of materiality for such events is an appropriate condition to add to this proposed provision. Commenters are requested to provide their views on the benefits and drawbacks of this aspect of the proposal.

F. Effective Date and Transition

The proposed amendments to Rule 15c2–12 would impact only continuing disclosure agreements that are entered into in connection with primary offerings occurring on or after the effective date of these proposed amendments, if they were adopted by the Commission. The Commission understands that existing undertakings by issuers and obligated persons that were entered into prior to the effective date of any final amendments would not require a broker, dealer, or municipal securities dealer to reasonably determine that the issuer or other obligated person had agreed to provide notice of specified events in a timely manner not in excess of ten business days of the event's occurrence or include the additional items discussed above that are proposed to be added to paragraph (b)(5)(i)(C) of the Rule. In addition, such existing undertakings would provide for the submission of the events specified in paragraph (b)(5)(i)(C) of the Rule, ''if material.''

Further, the Commission is aware that, prior to the effective date of any final amendments, a broker, dealer, or municipal securities dealer in primary offerings of demand securities in authorized denominations of $100,000 would not be required reasonably to determine that the issuer or other obligated person had entered into a continuing disclosure agreement, as prescribed by the Rule. The Commission requests comment regarding the potential effects and implications of existing continuing disclosure agreements having different terms (*e.g.,* lacking the proposed additional events for which notices would be sent to the MSRB and the specified ten business day deadline for doing as discussed above) than continuing disclosure agreements entered into on or after any effective date of the proposed amendments, should the proposed amendments be adopted by the Commission.

The Commission preliminarily believes that, if the proposed amendments to Rule 15c2–12 were adopted, it would be preferable to implement them expeditiously. If the Commission were to approve the proposed amendments, the Commission is preliminarily considering an effective date that would be no earlier than three months after any final adoption of the proposed amendments in order to permit sufficient time for the MSRB to make necessary modifications to the EMMA system and for Participating Underwriters to comply with the new Rule. The Commission requests comment on such an effective date and whether another effective date might be preferable, if the Commission were to adopt the proposed rule amendments. In particular, comment is requested regarding any transition issues with respect to the proposed amendments, such as whether there would be any conflicts with respect to terms in existing continuing disclosure agreements.

The Commission notes that under paragraph (c) of the Rule, a broker, dealer, or municipal securities dealer cannot recommend the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraphs (b)(5)(i)(C) and (D) and paragraph (d)(2)(ii)(B) of the Rule with respect to the security. The Commission recognizes that continuing disclosure agreements entered into prior to the effective date of any final amendments that the Commission may adopt would not reflect changes made to the Rule by such amendments, including with respect to event notices. As a result, event items covered by a continuing disclosure agreement entered into prior to the effective date of any amendments that the Commission may adopt may be different from those event items covered by a continuing disclosure agreement entered into on or after the effective date of any final amendments that the Commission may adopt. Thus, in the case of municipal securities subject to a continuing disclosure agreement entered into prior to the effective date of any final amendments that the Commission may adopt, the recommending broker, dealer or municipal securities dealer would receive notice solely of those events covered by that continuing disclosure agreement, namely, the eleven events specified in the current Rule. Because, in that case, the continuing disclosure agreement would not cover any of the items proposed to be added to the Rule, it would not be necessary for the recommending broker, dealer, or municipal securities dealer to have procedures in place that provide reasonable assurance that it received prompt notice of events proposed to be added to the Rule. The Commission requests comment on the impact of the proposed amendments with respect to brokers, dealers, and municipal securities dealers that recommend the purchase or sale of municipal securities. The Commission also requests comment on what changes, if any, brokers, dealers and municipal securities dealers would have to make to their procedures as a result of any final amendments that the Commission may adopt relating to the receipt of event notices. The Commission also requests comment on whether it should amend the Rule or otherwise provide further guidance to take into account differences in event notices included in continuing disclosure agreements entered into prior to the effective date of any final amendments that the Commission may adopt and those event notices included in continuing disclosure agreements entered into on or after the effective date of any final amendments that the Commission may adopt.

The Commission seeks comment on any other transition issues in connection with the proposed amendments to Rule 15c2–12. For example, in connection with the 2008 Amendments, one commenter suggested that continuing disclosure agreements executed following the effective date of the 2008 Amendments should amend all prior continuing disclosure agreements of the same issuer to incorporate the changes to the Rule made in the 2008 Amendments. In the event that the proposed amendments were to be

adopted, would transitional issues be minimized by the fact that over time fewer bonds would be subject to continuing disclosure agreements entered into prior to the effective date? Would an effective date that is no earlier than three months after any final approval of the proposed amendments, should the Commission determine to adopt the proposed amendments, provide adequate time for issuers and underwriters to become informed about the proposed amendments and adapt to them?

III. Interpretive Guidance With Respect to Obligations of Participating Underwriters

As noted above in Section I.B., the Commission is aware that municipal securities industry participants have expressed concern that some municipal issuers and other obligated persons may not consistently submit continuing disclosure documents, particularly event notices and failure to file notices, in accordance with their undertakings in continuing disclosure agreements.[125]

Municipal security holders' access to meaningful information promotes informed investment decision-making about whether to buy, sell or hold municipal securities [126] and thereby better protection against misrepresentations and fraudulent activities. Availability of that information also will aid brokers, dealers, and municipal securities dealers to satisfy their obligations under the federal securities laws to have a reasonable basis for recommending municipal securities. In the Commission's view, the flow of municipal securities disclosure to investors and other market participants depends on issuers and obligated persons abiding by their undertakings in continuing disclosure agreements.[127] Accordingly, the Commission emphasizes that it is important for an underwriter in a municipal offering to evaluate carefully the likelihood that the issuer or obligated person will comply on a timely basis with the undertakings it has made.

In prior releases, the Commission set forth its interpretations of the obligations of municipal underwriters under the antifraud provisions of the federal securities laws.[128] The Commission discussed the duty of underwriters to the investing public to have a reasonable basis for recommending any municipal securities and, in fulfilling that obligation, it is their responsibility to review the issuer's or obligated person's disclosure documents in a professional manner with respect to the accuracy and completeness of statements made in connection with the offering.[129] The Commission today reaffirms its previous interpretations and provides additional guidance with respect to underwriters' responsibilities under the antifraud provisions of the federal securities laws.[130]

The provisions of paragraph (b) of Rule 15c2–12 are intended to assist a municipal underwriter in meeting its ''reasonable basis'' obligations, including the requirement that an underwriter receive and review a nearly complete final official statement prior to bidding for or purchasing securities in connection with the offering.[131] Under paragraph (b)(5)(i)(C) of the Rule, the underwriter is obligated to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract for the benefit of the bondholders, to provide continuing disclosure documents to the MSRB.[132] Further, the Rule's definition of ''final official statement'' provides for the disclosure of any instances in the previous five years in which any person identified in the continuing disclosure agreement has failed to comply, in all material respects, with any previous informational undertakings in the continuing disclosure agreement.[133] When the Commission in 1994 adopted these provisions of the Rule, it stated its belief that the failure of the issuer or other obligated person to comply in all material respects with prior informational undertakings is information that is important to the market, and should, therefore, be disclosed in the final official statement.[134] As the Commission noted at that time, the provision in the Rule regarding disclosure of a prior history of material non-compliance by issuers or other obligated persons with their undertakings was specifically intended to serve as an incentive for them to comply with their undertakings to provide secondary market disclosure.[135] Moreover, such disclosure would assist underwriters and others in assessing the reliability of issuers' or obligated persons' disclosure representations.[136] The Commission continues to believe in the importance of these Rule provisions and would like to remind underwriters of their obligations under Rule 15c2–12.

The Commission previously has stated that, in its view, the reasonableness of a belief in the accuracy and completeness of the key representations in the final official statement, and the extent of a review of the issuer's or other obligated person's situation necessary to arrive at that belief, will depend upon all the circumstances.[137] In both negotiated and competitively bid municipal offerings, the Commission expects, at a minimum, that underwriters will review the issuer's disclosure documents in a professional manner for possible inaccuracies and omissions.[138] The Commission previously has provided a non-exclusive list of factors that it believes generally would be relevant in determining the reasonableness of an underwriter's basis for assessing the truthfulness of key representations in final official statements.[139] These factors include: (1) The extent to which the underwriter relied upon municipal officials, employees, experts, and other persons whose duties have given them knowledge of particular facts; (2) the role of the underwriter (manager, syndicate member, or selected dealer);

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[125] *See* the comments of participants at the *2001 SEC Municipal Market Roundtable—Secondary Market Disclosure for the 21st Century*, (available at *http://www.sec.gov/info/municipal/roundtables/thirdmuniround.htm*). *See also* E-mail from Peter J. Schmitt, CEO, DPC Data Inc., to SEC, Rule-Comments, dated September 19, 2008, regarding the 2008 Proposed Amendments.

[126] *See e.g.*, 2008 Amendments Adopting Release, *supra* note 11, 73 FR at 76129.

[127] *See* 1994 Amendments Adopting Release, *supra* note 5, 59 FR at 59594–5.

[128] *See* Securities Exchange Act Release No. 26100 (September 22, 1988), 53 FR at 37787–91 (September 28, 1988) (''1988 Proposing Release''); the 1989 Adopting Release, *supra* note 3, 54 FR at 28811–12; and the 1994 Interpretive Release, *supra* note 5, 59 FR at 12757–58 (reaffirming the Commission's interpretation of the obligations of municipal underwriters under the antifraud provisions of the federal securities laws).

[129] *See* 1989 Adopting Release, *supra* note 3, 54 FR at 28811. *See also* 1988 Proposing Release, *supra* note 128, 53 FR at 37787.

[130] In light of the underwriter's obligation, as discussed in the 1988 Proposing Release, *supra* note 128, 53 FR at 37787–91, the 1989 Adopting Release, *supra* note 3, 54 FR 28811–12, and the 1994 Interpretive Release, *supra* note 5, 59 FR 12757–58, to review the official statement and to have a reasonable basis for its belief in the accuracy and completeness of the official statement's key representations, the Commission noted that disclaimers by underwriters of responsibility for the information provided by the issuer or other parties without further clarification regarding the underwriter's belief as to accuracy, and the basis therefore, are misleading and should not be included in official statements. *See* 1994 Interpretive Release, *supra* note 5, 59 FR 12758 n.103.

[131] *See* 1988 Proposing Release, *supra* note 128, 53 FR at 37790.

[132] Under the 2008 Amendments, the MSRB is the sole information repository.

[133] Rule 15c2–12(f)(3), 17 CFR 15c2–12(f)(3).

[134] *See* 1994 Amendments Adopting Release, *supra* note 5, 59 FR at 59594–5.

[135] *Id.* at 59595.

[136] *Id.*

[137] *See* 1988 Proposing Release, *supra* note 128, 53 FR at 37789 and 1989 Adopting Release, *supra* note 3, 54 FR 28811–12.

[138] *Id.*

[139] *Id.*

(3) the type of bonds being offered (general obligation, revenue, or private activity); (4) the past familiarity of the underwriter with the issuer; (5) the length of time to maturity of the bonds; and (6) whether the bonds are competitively bid or are distributed in a negotiated offering.[140] Sole reliance on the representations of the issuer will not suffice.[141]

The Commission has determined further to expound upon its prior interpretations regarding municipal underwriter's responsibilities. As articulated in a prior interpretation, the Commission believes that it is doubtful that an underwriter could form a reasonable basis for relying on the accuracy or completeness of the issuer's or obligated person's ongoing disclosure representations, if such issuer or obligated person has a history of persistent and material breaches or if it has not remedied such past failures by the time the offering commences.[142] The Commission believes that, if the underwriter finds that the issuer or obligated person has on multiple occasions during the previous five years,[143] failed to provide on a timely basis continuing disclosure documents, including event notices and failure to file notices, as required in continuing disclosure agreements for prior offerings, it would be very difficult for the underwriter to make a reasonable determination that the issuer or obligated person would provide such information under a continuing disclosure agreement in connection with a subsequent offering. In the Commission's view, it is doubtful that an underwriter could meet the reasonable belief standard without the underwriter affirmatively inquiring as to that filing history.[144] The underwriter's reasonable belief would be based on its independent judgment, not solely on representations of the issuer or obligated person as to the materiality of any failure to comply with any prior undertaking. If the underwriter finds that the issuer or obligated person has failed to provide such information, the underwriter should take that failure into account in forming its reasonable belief in the accuracy and completeness of representations made by the issuer or obligated person.

Comment is solicited regarding whether there are alternative or additional ways in which an underwriter could satisfy its obligations, including obligations to ascertain whether issuers or obligated persons are abiding by their municipal disclosure commitments. Commenters should address the current practices used by underwriters to satisfy their ''reasonable basis'' obligation and any aspects of such practices that could be addressed through further Commission interpretation or rulemaking.

IV. Request for Comments

The Commission seeks comment on all aspects of the proposed amendments to the Rule. In addition to the comments requested throughout this release, comment is requested on whether the proposed amendments would further the Commission's goal of enhancing the availability to investors important information regarding municipal securities and their issuers in a prompt manner, and whether the proposed amendments would improve investors' ability to obtain such information. Further, the Commission seeks comment regarding the impact of the proposed amendments on Participating Underwriters, issuers and obligated persons, institutional and individual investors, the MSRB, information vendors, and others that may be affected by the proposed amendments.

In addition, the Commission requests comment on whether there are additional events for which notices should be provided, and alternative approaches or modifications to the Commission's proposed approach to improving the public's ability to obtain important information about municipal securities that the Commission should consider. Commenters are requested to indicate their views and to provide any other suggestions that they may have.

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to the Rule contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[145] In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission has submitted revisions to the currently approved collection of information titled ''Municipal Securities Disclosure'' (17 CFR 240.15c2–12) (OMB Control No. 3235–0372) to OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collection of Information

Under paragraph (b) of Rule 15c2–12, a Participating Underwriter currently is required: (1) To obtain and review an official statement ''deemed final'' by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices (*i.e.*, continuing disclosure documents) to the MSRB in an electronic format as prescribed by the MSRB.[146] Under paragraph (c) of the Rule, a broker-dealer that recommends the purchase or sale of a municipal security must have procedures in place that provide reasonable assurance that it will receive prompt notice of any event specified in paragraph (b)(5)(i)(C) of the Rule and any failure to file annual financial information regarding the security.[147]

Under paragraph (d)(1)(iii) of the Rule, a primary offering of municipal securities in authorized denominations of $100,000 or more is exempt from the Rule, if the securities, at the option of the holder thereof, may be tendered to

[140] *Id.*

[141] *See* 1988 Proposing Release, *supra* note 128, 53 FR at 37789.

[142] *See* 1994 Amendments Adopting Release, *supra* note 5, 59 FR at 59595.

[143] 17 CFR 240.15c2–12(f)(3).

[144] The Commission notes that, in light of the adoption of the 2008 Amendments and their effective date of July 1, 2009, for disclosures made on or after July 1, 2009, an underwriter could verify that the information has been submitted electronically to the MSRB.

[145] 44 U.S.C. 3501 *et seq.*

[146] As noted above, the Commission recently approved amendments to Rule 15c2–12 that, among other things, established the MSRB as the sole repository for continuing disclosure documents and provided that those documents are to be submitted to the MSRB in an electronic format. *See* 2008 Amendments Adopting Release, *supra* note 11. Previously, continuing disclosure documents were to be submitted to the NRMSIRs and the appropriate SID, if any. The 2008 Amendments became effective on July 1, 2009. The Commission proposes that the effective date of the proposed amendments discussed herein would be no earlier than three months after the final approval of the proposed amendments, should the Commission adopt them.

[147] 17 CFR 240.15c2–12(c).

an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.[148] These securities are referred to as demand securities or variable rate demand obligations (''VRDOs''). The Commission proposes to modify the exemption for demand securities by adding proposed paragraph (d)(5) to the Rule, which would apply current paragraphs (b)(5) and (c) of the Rule to a primary offering of demand securities in authorized denominations of $100,000 or more.

Under the current Rule, a Participating Underwriter must reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide an event notice to the MSRB when any of the following events with respect to the securities being offered in an offering occurs, if material: (1) Principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of security holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of securities; and (11) rating changes.[149]

Under the proposed amendments, Participating Underwriters would be required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide event notices to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days, rather than only in ''a timely manner.'' In addition, the Commission proposes to add the following event items to paragraph (b)(5)(i)(C) of the Rule: (1) the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of the securities; (2) tender offers; (3) bankruptcy, insolvency, receivership or similar event of the issuer or obligated person; (4) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (5) appointment of a successor or additional trustee, or the change of name of a trustee, if material. Further, the Commission proposes to delete the generally applicable ''if material'' condition from paragraph (b)(5)(i)(C) of the Rule and instead indicate in specific event items listed in that paragraph whether notice of such event must be made only to the extent that such event is material. In this regard, Participating Underwriters would need to reasonably determine that notice of the following events would be made in all circumstances: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.

B. Proposed Use of Information

By specifying the time period for submission of event notices, expanding the Rule's current categories of events, and modifying an exemption in the current Rule used for demand securities, the proposed amendments are intended to promptly make available to broker-dealers, institutional and retail investors, and others important information about significant events relating to municipal securities and their issuers. The proposed amendments would help enable investors and other municipal securities market participants to be better informed about important events that occur with respect to municipal securities and their issuers, including with respect to demand securities, and thus would allow investors to better protect themselves against fraud. In addition, the proposed amendments would provide brokers, dealers, and municipal securities dealers with access to important information about municipal securities that they can use to carry out their obligations under the securities laws. This information could be used by individual and institutional investors; underwriters of municipal securities; other market participants, including broker-dealers and municipal securities dealers; analysts; municipal securities issuers; the MSRB; vendors of information regarding municipal securities; Commission's staff; and the public generally.

C. Respondents

In December 2008, OMB approved a revision to the collection of information associated with the Rule in accordance with 2008 Amendments to the Rule. The current paperwork collection associated with Rule 15c2–12 applies to broker-dealers, issuers of municipal securities, and the MSRB. The paperwork collection associated with today's proposed amendments applies to the same respondents.

The proposal would require that a Participating Underwriter in a primary offering of municipal securities reasonably determine that the issuer or an obligated person has undertaken in a continuing disclosure agreement to submit event notices in a timely manner not in excess of ten business days of their occurrence to the MSRB, as well as to submit such notices for proposed additional disclosure items. The proposal also would revise the Rule with respect to whether or not a materiality condition would apply to each of the Rule's specified events prompting submission of notices to the MSRB. In addition, the proposed amendments would revise the Rule with respect to its treatment of demand securities. The Commission gathered updated information regarding the paperwork burden associated with Rule 15c2–12 in connection with the Commission's adoption of the 2008 Amendments and is using these estimates in preparing the paperwork collection associated with its current proposal. In the 2008 Amendments Adopting Release, the Commission estimated that the number of respondents impacted by the paperwork collection associated with the Rule consists of 250 broker-dealers and 10,000 issuers.[150] The Commission's staff expects that the proposed amendments would not change the number of broker-dealer respondents described in the 2008 Amendments Adopting Release. The Commission's staff expects that the proposed amendments would increase the number of issuer respondents in comparison to the Rule's paperwork current collection, as set forth in the 2008 Amendments Adopting Release. This is because the proposed amendments would expand the types of securities covered under subparagraphs (b)(5) and (c) of the Rule, thus increasing the number of issuers having a paperwork burden. Specifically, the

[148] 17 CFR 240.15c2–12(d)(1)(iii).

[149] 17 CFR 240.15c2–12(b)(5)(i)(C).

[150] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

Commission's staff estimates that the proposed revision of the Rule's exemption for demand securities would increase the number of issuers with a paperwork burden by 2,000 issuers, for a total of 12,000 issuer respondents.[151] The Commission's 2008 Amendments Adopting Release included a paperwork collection burden for the MSRB and, for purposes of the proposed amendments, the Commission's staff expects that the MSRB also would be a respondent.

D. Total Annual Reporting and Recordkeeping Burden

In the 2008 Amendments Adopting Release, the Commission included estimates for the hourly burdens that the Rule imposes upon broker-dealers, issuers of municipal securities, and the MSRB. The Commission's staff has relied on these estimates to prepare the analysis discussed below for each of the aforementioned entities.

The Commission's staff estimates the aggregate information collection burden for the amended Rule would consist of the following:

1. Broker-Dealers

The Commission's staff estimates that approximately 250 broker-dealers potentially could serve as Participating Underwriters in an offering of municipal securities.[152] Therefore, the Commission's staff estimates that, under the proposed amendments, the maximum number of broker-dealer respondents would be 250.

a. Proposed Amendment To Modify the Exemption for Demand Securities

Under the current Rule, the Commission has estimated that the total annual burden on all 250 broker-dealers is 250 hours (1 hour annually per broker-dealer).[153] The Commission believes that the proposed amendment to modify the exemption from the Rule for a primary offering of demand securities in authorized denominations of $100,000 or more, would increase the number of issuers with municipal securities offerings that are subject to the Rule annually by 20%, based on the Commission's staff estimate of the ratio of demand securities outstanding in relation to the municipal security market generally.[154] The Commission's staff estimates that this 20% increase in the number of issuers with offerings subject to the Rule also would increase the estimated average annual burden for each broker-dealer by 20%, or .20 hours (12 minutes = 60 minutes × .20 (20%)) and the total estimated annual paperwork burden for all broker-dealers by 20%, or 50 hours.[155] This increased burden represents the estimated additional time broker-dealers would need annually to review the continuing disclosure agreements associated with the additional municipal securities offerings that would be subject to the amended Rule. As discussed in more detail below,[156] the Commission notes that the continuing disclosure agreements that are reviewed by broker-dealers as part of their obligation under the Rule are form agreements. The proposed changes to the Rule would result in minor changes to certain provisions of these continuing disclosure agreements. However, because these continuing disclosure agreements are form agreements, the Commission does not believe that there would be a substantial increase in the annual hourly burden for broker-dealers under the proposed amendments to the Rule. Accordingly, the Commission's staff estimates that 250 broker-dealers would incur an estimated average burden of 300 hours per year to comply with the Rule, as proposed to be amended.[157]

b. Proposed Amendments to Events To Be Disclosed Under a Continuing Disclosure Agreement

The proposed amendments to paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule would not alter a broker-dealer's obligation to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices to the MSRB. As described above, the proposed amendments to paragraph (b)(5)(i)(C) of the Rule would add four new event disclosure items to the Rule, as well as amend an existing event disclosure item currently contained in the Rule, and would modify the events that are subject to a materiality determination before triggering a notice to the MSRB. In addition, the proposed amendments to paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule would change the timing for filing event notices from ''in a timely manner'' to ''in a timely manner not to exceed ten business days.'' The Commission believes that these amendments would not change the obligation of broker-dealers under the Rule to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices to the MSRB.[158] Accordingly, the Commission does not believe that the proposed amendments relating to the timing and scope of event notices would affect the annual paperwork burden for broker-dealers.

c. One-Time Paperwork Burden

The Commission's staff estimates that a broker-dealer would incur a one-time paperwork burden to have its internal compliance attorney prepare and issue a notice advising its employees about the proposed revisions to Rule 15c2–12, if they are adopted by the Commission. In the 2008 Amendments Adopting Release, the Commission estimated that it would take a broker-dealer's internal compliance attorney approximately 30 minutes to prepare and issue a notice describing the broker-dealer's obligations in light of the 2008 Amendments to the Rule.[159] The Commission's staff believes that this 30 minute estimate to prepare a notice would also apply to a broker-dealer's internal compliance attorney to prepare such a notice for these current amendments to the Rule. The Commission's staff believes that the task of preparing and issuing a notice

[151] In 2008, there were approximately 2,000 offerings of demand securities. *See Two Decades of Bond Finance: 1989–2008,* The Bond Buyer/Thomson Reuters 2009 Yearbook 7 (Matthew Kreps ed., SourceMedia, Inc.) (2009). To provide estimates that would not be under-inclusive, the Commission's staff has elected to assume that all 2,000 offerings of demand securities were issued by separate issuers and that each of those issuers currently is not a party to a continuing disclosure agreement that provides for the submission of continuing disclosure documents to the MSRB. Thus, the Commission's staff estimates that approximately 2,000 additional issuers would be affected by the proposed amendments to the Rule. These 2,000 additional issuers represent a 20% increase in the total number of issuers affected by the Rule. 10,000 (number of issuers under current Rule)/2,000 (number of additional issuers under proposed amendments to the Rule) × 100 = 20%.

[152] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[153] *Id.*

[154] *See supra* note 151.

[155] 250 hours (total annual burden for all broker-dealers under the current Rule) × .20 (20% increase in total hourly burden) = 50 hours. This estimated increase in the annual burden for broker-dealers also accounts for their review of continuing disclosure agreements in connection with remarketings of VRDOs that are primary offerings.

[156] *See* Section V.D.2., *infra.*

[157] (250 hours (total estimated annual hourly burden for all broker-dealers under the current Rule) + 50 hours (total estimated additional annual hourly burden for all broker-dealers under the proposed amendments to the Rule) = 300 hours.

[158] The Commission notes that while the proposed amendments to the Rule do not change this obligation, broker-dealers would need to reasonably determine that the written agreement or contract entered into by an issuer or obligated person contains the proposed change to the timing for filing event notices.

[159] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

advising the broker-dealer's employees about the proposed amendments, if they are adopted, is consistent with the type of compliance work that a broker-dealer typically handles internally. Accordingly, the Commission's staff estimates that 250 broker-dealers would each incur a one-time, first-year burden of 30 minutes to prepare and issue a notice to its employees regarding the broker dealer's obligations under the proposed amendments.

d. Total Annual Burden for Broker-Dealers

Under the proposed amendments, the total burden on broker-dealers would be 425 hours for the first year [160] and 300 hours for each subsequent year.[161]

2. Issuers

Issuers' undertakings regarding the submission of annual filings, event notices, and failure to file notices that are set forth in continuing disclosure agreements contemplated by the existing Rule, as well as the proposed amendments to the Rule, impose a paperwork burden on issuers of municipal securities.

a. Proposed Amendment To Modify the Exemption for Demand Securities

The Commission's staff believes that the proposed amendment to delete paragraph (d)(1)(iii) from the Rule, which contains an exemption from the Rule for a primary offering of demand securities in authorized denominations of $100,000 or more, and add new paragraph (d)(5) to the Rule to apply paragraphs (b)(5) and (c) of the Rule to a primary offering of demand securities in authorized denominations of $100,000 or more, would increase the number of issuers with a paperwork burden under the Rule. In the 2008 Amendments Adopting Release, the Commission estimated that the Rule affected approximately 10,000 issuers.[162] Using the estimate of 10,000 issuers from the 2008 Amendments Adopting Release, the Commission's staff estimates that, under the proposed amendments, the number of issuers with a paperwork burden would increase by approximately 20% [163] to 12,000 issuers.[164] These additional issuers would increase the aggregate number of annual filings, event notices and failure to file notices submitted each year. In the 2008 Amendments Adopting Release, the Commission estimated the hourly burdens for an issuer to prepare and submit an annual filing (45 minutes), an event notice (45 minutes) and a failure to file notice (30 minutes).[165] The proposed modification to the Rule's exemption for demand securities would not alter these hourly burdens. Thus, the Commission's staff estimates that the aggregate number of annual filings, event notices and failure to file notices submitted by issuers also would increase by 20% from the estimates contained in the 2008 Amendments Adopting Release.[166]

(i) Annual Filings

In the 2008 Amendments Adopting Release, the Commission estimated that Rule 15c2–12 imposed a total paperwork burden of 11,250 hours on 10,000 issuers to prepare and submit annual filings in any given year.[167] In determining the paperwork burden for issuers under the 2008 Amendments Adopting Release, the Commission estimated that issuers would prepare and submit a total of approximately 15,000 annual filings yearly.[168] Under the proposed amendment to modify the current exemption for demand securities contained in the Rule, the Commission's staff estimates that 12,000 municipal issuers with continuing disclosure agreements would prepare and submit approximately 18,000 annual filings yearly.[169]

In the 2008 Amendments Adopting Release, the Commission estimated that the process for an issuer to prepare and submit annual filings to the MSRB in an electronic format would require approximately 45 minutes.[170] The proposed amendments to the Rule would not change the way annual filings are prepared and submitted. The Commission's staff estimates that, under the proposed amendments, an issuer would still require approximately 45 minutes to prepare and submit annual filings to the MSRB in an electronic format. Therefore, under the proposed amendments, the total burden on issuers of municipal securities to prepare and submit 18,000 annual filings to the MSRB in an electronic format is estimated to be 13,500 hours.[171]

(ii) Event Notices

In determining the paperwork burden for issuers under the 2008 Amendments Adopting Release, the Commission estimated that issuers would prepare and submit a total of approximately 60,000 event notices yearly.[172] Under the proposed amendments to modify the exemption for demand securities contained in the Rule, the Commission's staff estimates that the 12,000 municipal issuers with continuing disclosure agreements would prepare and submit approximately 72,000 event notices yearly.[173]

In the 2008 Amendments Adopting Release, the Commission estimated that the process for an issuer to prepare and submit event notices to the MSRB in an electronic format would require approximately 45 minutes.[174] Since the proposed amendments to the Rule would not change the way event notices are prepared and submitted, the Commission's staff estimates that, under today's proposed amendments, an issuer still would require approximately 45 minutes to prepare and submit an event

[160] (250 (broker-dealers impacted by the proposed amendments to the Rule) × 1.20 hours) + (250 (broker-dealers impacted by the proposed amendments to the Rule) × .5 hour (estimate for one-time burden to issue notice regarding broker-dealer's obligations under the proposed amendments to the Rule)) = 425 hours.

[161] 250 (broker-dealers impacted by the proposed amendments to the Rule) × 1.20 hours = 300 hours.

[162] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[163] *See supra* note 151.

[164] 10,000 (number of issuers under current Rule) 1.20 (20% increase) = 12,000. To provide estimates that would not be under-inclusive, the Commission's staff has elected to use an estimate that assumes that all issuers of demand securities currently are not a party to a continuing disclosure agreement that provides for the submission of continuing disclosure documents to the MSRB.

[165] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[166] The Commission's staff believes that this estimated 20% increase in the number of each type of continuing disclosure document filed by issuers is appropriate since it maintains the same ratio between the number of issuers and the number of each type of document submitted by these issuers as set forth in the 2008 Amendments Adopting Release.

[167] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[168] *Id.*

[169] 15,000 (annual filings under 2008 Amendments Adopting Release) × 1.20 (20% increase in filings under proposed amendments) = 18,000 annual filings.

[170] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[171] 18,000 (estimated number of annual filings under proposed amendments) × .75 hours (45 minutes) (estimated time to prepare and submit annual filings under the 2008 Amendments Adopting Release) = 13,500 hours. To provide an estimate for the paperwork burden that would not be under-inclusive, the Commission's staff elected to use the higher end of the estimate for the total number of annual filings estimated to be submitted each year.

[172] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[173] 60,000 (number of event notices under 2008 Amendments Adopting Release) × 1.20 (20% increase in filings under proposed amendments) = 72,000 event notices. The Commission's staff's estimates of the additional event notices associated with the proposed amendments relating to the materiality condition and additional event disclosure items contained in paragraph (b)(5)(1)(C) of the Rule are discussed in Sections V.D.2.a.iii. through vii. *infra*. As discussed below, the total number of event notices estimated to be submitted to the MSRB in connection with the proposed amendments is 78,757 notices.

[174] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

notice. Therefore, under today's proposed amendments relating to demand securities, the total burden on issuers of municipal securities to prepare and submit 72,000 event notices to the MSRB is estimated to be 54,000 hours.[175]

(iii) Failure To File Notices

In the 2008 Amendments Adopting Release, the Commission estimated that Rule 15c2–12 currently imposes a total paperwork burden of 1,000 hours on 10,000 issuers to submit failure to file notices in any given year.[176] In determining the paperwork burden for issuers under the 2008 Amendments Adopting Release, the Commission estimated that 10,000 issuers would prepare and submit a total of approximately 2,000 failure to file notices yearly.[177] Under the proposed amendment to modify the exemption for demand securities contained in the Rule, the Commission's staff estimates that the 12,000 municipal issuers with continuing disclosure agreements would prepare and submit approximately 2,400 failure to file notices yearly.[178]

In the 2008 Amendments Adopting Release, the Commission estimated that the process for an issuer to submit failure to file notices would require approximately 30 minutes.[179] Since the proposed amendments to the Rule would not change the way failure to file notices are prepared and submitted, the Commission's staff estimates that, under today's proposed amendments, an issuer would require approximately 30 minutes to prepare and submit a failure to file notice. Therefore, under the proposed amendments, the total burden on issuers of municipal securities to prepare and submit 2,400 failure to file notices to the MSRB is estimated to be 1,200 hours.[180]

b. Proposed Amendments to Event Notice Provisions of the Rule

The Commission proposes to modify paragraph (b)(5)(i)(C) of the Rule, which presently requires Participating Underwriters to reasonably determine that an issuer or obligated person has entered into a continuing disclosure agreement that, among other things, contemplates the submission of an event notice to the MSRB in an electronic format upon the occurrence of any events set forth in the Rule, if such event is material. The current Rule contains eleven such events. The proposed amendments to this paragraph of the Rule would add four new event disclosure items and revise an existing event disclosure item. In addition, the proposed amendments to paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) would revise the Rule to state that event notices should be submitted in a timely manner ''not to exceed ten business days after the occurrence of the event,'' rather than simply in a timely manner, as set forth in the current Rule, and would apply to some (but not all) events the materiality condition that applies to the current eleven events. In the 2008 Amendments Adopting Release, the Commission estimated that 60,000 event notices would be prepared and submitted annually. As described above, the Commission's staff estimates that the proposed amendments to modify the Rule's exemption for demand securities would increase the number of event notices to be prepared and submitted to 72,000 annually.[181] The Commission's staff believes that these proposed amendments to paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule would further increase the current annual paperwork burden for issuers because they would result in an increase in the number of event notices to be prepared and submitted.[182]

(i) Time Frame for Submitting Event Notices Under a Continuing Disclosure Agreement

Currently, paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule state that notice of an event should be provided in ''a timely manner.'' The proposed amendment would revise these provisions to state that such notice should be provided ''in a timely manner not in excess of ten business days after the occurrence of the event.'' As noted above, the Commission's staff estimates that an issuer can prepare and submit an event notice in 45 minutes, which is the hourly burden noted in the 2008 Amendments Adopting Release.[183] The proposed revision to the Rule regarding the time period for submission of event notices would not change this estimated burden of 45 minutes, which is the amount of time under the Rule's current paperwork collection to prepare and submit event notices. Rather, the change in burden hours results from the fact that more event notices are expected to be filed under the proposed amendments. The Commission's staff believes that the proposed change to ''not in excess of ten business days after the occurrence of the event'' to submit a event notice would not affect the length of time it takes an issuer to prepare and submit the notice and thus would not have any impact on the current paperwork burden with respect to the length of time it would take an issuer to prepare and submit an event notice.

(ii) Modification With Regard to Those Events for Which a Materiality Determination Is Necessary

As discussed earlier, the Commission believes that it is appropriate to delete the condition in paragraph (b)(5)(i)(C) of the Rule that presently provides that notice of all of the listed events need be made only ''if material.'' In connection with the proposed deletion of the materiality condition, the Commission has reviewed each of the Rule's current specified events to determine whether a materiality determination should be retained for that particular event and preliminarily believes such a determination is still appropriate for certain listed events.[184] As a result of this proposed change, for those events listed in paragraph (b)(5)(i)(C) that are not proposed to contain the ''if material'' condition, the Participating Underwriter must reasonably determine that the issuer or other obligated person has agreed to submit event notices to the MSRB whenever such an event occurs. These events include: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.[185] The Commission, however, believes that for other events currently listed in paragraph (b)(5)(i) a materiality determination should be retained.

[175] 72,000 (estimated number of material event notices under proposed amendments) × .75 hours (45 minutes) (estimated time to prepare and submit material event notices under the 2008 Amendments Adopting Release) = 54,000 hours.

[176] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[177] *Id.*

[178] 2,000 (failure to file notices) × 1.20 (20% increase in filings) = 2,400 failure to file notices.

[179] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[180] 2,400 (estimated number of failure to file notices under proposed amendments) × .5 hours (30 minutes) (estimated time to prepare and submit failure to file notices under the 2008 Amendments Adopting Release) = 1,200 hours.

[181] *See supra* note 173.

[182] *Id.*

[183] *See supra* note 174 and accompanying text.

[184] The discussion in this section pertains to materiality determinations for events currently specified in paragraph (b)(5)(i)(C) of the Rule. For events proposed to be added to the Rule, whether a materiality determination is specified is included in the discussion below for each such proposed event.

[185] *See supra* Section II.C. for a discussion of the Commission's rationale regarding why the Commission proposes not to retain a materiality condition for these events.

In a telephone conversation between the Commission's staff and MSRB staff on June 12, 2009, Commission staff was advised that the increase in the number of event notices in connection with the proposal to modify the materiality condition would result in an increase of no more than 1,000 event notices, taking into account the increase in event notices that would result from the proposed amendment relating to demand securities.[186] Therefore, the Commission's staff estimates that this proposed change to the materiality condition would increase the total number of event notices to be submitted annually by issuers by 1,000 notices.

(iii) Amendment to the Submission of Event Notices Regarding Adverse Tax Events Under a Continuing Disclosure Agreement

Subparagraph (b)(5)(i)(C)(6) of the Rule refers to an event notice in the case of adverse tax events. Under the proposed amendments, subparagraph (b)(5)(i)(C)(6) of the Rule would be amended to include ''the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of the securities.'' This proposed amendment would address the circumstances in which issuers would submit an event notice to the MSRB with respect to IRS determinations of taxability or other material notices or determinations with respect to the tax status of a municipal security. As discussed above,[187] the Commission believes that the proposed amendment to subparagraph (b)(5)(i)(C)(6) of the Rule would clarify that IRS determinations of taxability or other material notices or determinations with respect to the tax status of a municipal security are events that currently should be disclosed under a continuing disclosure agreement. The Commission's staff estimates that the proposed amendments to paragraph (b)(5)(i)(C)(6) of the Rule would increase the total number of event notices to be submitted by issuers annually by approximately 130 notices.[188]

(iv) Tender Offers

Subparagraph (b)(5)(i)(C)(8) of the Rule refers to notice of an event in the case of bond calls. Under the proposed amendments, subparagraph (b)(5)(i)(C)(8) of the Rule would be amended to include tender offers. The inclusion of tender offers in this subparagraph of the Rule would expand the circumstances in which issuers would submit an event notice to the MSRB. The Commission's staff estimates that proposed amendments to subparagraph (b)(5)(i)(C)(8) of the Rule would increase the total number of event notices to be submitted by issuers annually by approximately 100 notices.[189]

(v) The Occurrence of Bankruptcy, Insolvency, Receivership or Similar Event Regarding an Issuer or an Obligated Person

Under the proposed amendments, subparagraph (b)(5)(i)(C)(12) would be added to the Rule and would contain a new disclosure event in the case of bankruptcy, insolvency, receivership or similar event of the issuer or obligated person. The proposed addition to the Rule of bankruptcy, insolvency, receivership or similar event of the issuer or obligated person would expand the circumstances in which issuers would submit an event notice. Based on a review of industry sources by the Commission's staff, the Commission's staff estimates that the proposed amendment to add the new bankruptcy, insolvency, receivership or similar event of the issuer or obligated person in subparagraph (b)(5)(i)(C)(8) of the Rule would increase the total number of event notices submitted by issuers annually by approximately 24 notices.[190]

(vi) Merger, Consolidation, Acquisition, and Sale of All or Substantially All Assets

Under the proposed amendments, subparagraph (b)(5)(i)(C)(13) would be added to the Rule and would contain a new disclosure event in the case of a merger, consolidation, acquisition involving an obligated person or sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material. The proposed addition to the Rule of the merger, consolidation, acquisition, or sale of all or substantially all of the assets to the Rule would expand the circumstances in which issuers would submit an event notice. The Commission's staff believes that the proposed amendment to add the new event of merger, consolidation, acquisition, or sale of all or substantially all of the assets in subparagraph (b)(5)(i)(C)(13) of the Rule would increase the total number of event notices submitted by issuers annually. Based on a review of industry sources, the Commission's staff estimates that the proposed amendment to add the new bankruptcy, insolvency, receivership or similar event of the issuer or obligated person in subparagraph (b)(5)(i)(C)(8) of the Rule would increase the total number of event notices submitted by issuers annually by approximately 1,783 notices.[191]

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[186] Telephone conversation between Ernesto A. Lanza, General Counsel, MSRB, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, June 12, 2009. The MSRB staff believes that the potential increase could be much smaller; however, the Commission's staff is using the estimate of 1,000 event notices to provide a conservative estimate.

[187] *See supra* Section II.C.

[188] During conversations with the Commission's staff in December 2008, the staff of the IRS indicated that during a 12-month period it issues approximately 130 notices of determinations of taxability. To provide an estimate that is not under-inclusive, the Commission's staff has estimated that event notices are not currently submitted for any of these IRS notices. Accordingly, the Commission's staff estimates that approximately 130 additional event notices would be submitted under the proposed amendments to subparagraph (b)(5)(i)(C)(6) of the Rule.

[189] Based on industry sources that included lawyers, trade associations and vendors of municipal disclosure information, the Commission's staff has estimated that there are typically no more than 100 tender offers annually in the municipal securities market. The Commission's staff believes that the actual number of tender offers annually is significantly less than 100. However, to provide an estimate for the paperwork burden that would not be under-inclusive, the Commission's staff has elected to use the higher end of the estimate with respect to the number of municipal tender offers that occur each year.

[190] The Commission's staff based this estimate on the following: (i) 917 (number of issuances of municipal securities that defaulted during the 1990's based on statistics contained in Standard and Poor's ''A Complete Look at Monetary Defaults in the 1990s'' (June, 2000))/10 (number of years in a decade) = 91.7 (estimated number of issuances defaulting per year) (rounded to 92); (ii) 92 (estimated number of issuances defaulting per year)/50,000 (estimated total number of municipal issuers) = .002 (.2%) (estimated percentage of all issuers that default annually); and (iii) 12,000 (estimated number of issuers under proposed amendments to the Rule) × (.002) (.2%) (estimated percentage of all issuers that default annually) × 1 (estimated number of material event notices that an issuer would file) = 24 notices. The Commission's staff notes that not all issuers that default eventually enter bankruptcy. However, to provide an estimate for the paperwork burden that would not be under-inclusive, the Commission staff has elected to use the number of defaults as a basis for this estimate.

[191] The Commission's staff based this estimate on the following: (i) 2,201 (total number of merger transactions reported under the Hart-Scott-Rodino Act in 2007 contained in the *Hart-Scott-Rodino Annual Report Fiscal Year 2007* (November 2008) available at *http://www.ftc.gov/os/2008/11/hsrreportfy2007.pdf* (''HSR Report'') × 81% (percentage of mergers in industries in which municipal securities may exist) = 1782.81 notices (rounded to 1783). The Commission staff estimated the percentage of mergers in the municipal industry based on data contained in the HSR Report. The

Continued

(vii) Successor or Additional Trustee, or Change in Trustee Name

Under the proposed amendments, paragraph (b)(5)(i)(C)(14) would be added to the Rule and would contain a new disclosure event related to the appointment of a successor or additional trustee or the change of name of a trustee, if material. The proposed addition to the Rule of the event relating to trustee changes would expand the circumstances in which issuers would submit an event notice to the MSRB. The Commission's staff believes that a change affecting the largest trustee of municipal securities would provide a reasonable estimate of the number of additional event notices that would be submitted annually under this proposed amendment to the Rule. The largest trustee covered approximately 31% of the municipal issuances in 2008.[192] The Commission's staff believes that this percentage represents a reasonable estimate of the percentage of issuers covered by the largest trustee. Thus, the Commission's staff estimates that a change to the largest trustee would cover approximately 31% of issuers, or 3,720 issuers, which would serve as a conservative proxy for the number of event notices to be submitted regarding a change in trustee.[193] Therefore the Commission's staff estimates that the proposed amendment to add the new disclosure event contained in paragraph (b)(5)(i)(C)(14) of the Rule would increase the total number of event notices submitted by issuers annually by approximately 3,720 notices.[194]

c. Total Burden on Issuers for Proposed Amendments to Event Notices

In the 2008 Amendments Adopting Release, the Commission estimated that the process for an issuer to prepare and submit event notices to the MSRB in an electronic format would require approximately 45 minutes.[195] As discussed above, under the proposed amendment to modify the Rule's exemption for demand securities, the total number of issuers affected by the Rule would increase to 12,000, the total number of event notices submitted by issuers would increase to 72,000, and the annual paper work burden for issuers to submit event notices would increase to 54,000 hours. Under the proposed amendments to paragraph (b)(5)(i)(C) of the Rule, the Commission's staff estimates that the 12,000 municipal issuers with continuing disclosure agreements would prepare an additional 6,757 event notices annually,[196] raising the total number of event notices prepared by issuers annually to approximately 78,757.[197] This increase in the number of event notices would result in an increase of 5,068 hours in the annual paperwork burden for issuers to submit event notices.[198] This increase would result in an annual paperwork burden for issuers to submit event notices of approximately 59,068 hours (54,000 hours + 5,068 hours).

d. Total Burden for Issuers

Accordingly, under the proposed amendments, the total burden on issuers to submit annual filings, event notices and failure to file notices would be 73,768 hours.[199]

3. MSRB

In the 2008 Amendments Adopting Release, the Commission estimated that the MSRB incurred an annual burden of approximately 7,000 hours to collect, index, store, retrieve, and make available the pertinent documents under the Rule.[200] As discussed above, the Commission's staff anticipates that the proposed amendments to modify the Rule's exemption for demand securities would increase filings submitted by approximately 20% annually.[201] In addition, the Commission's staff estimates that the proposed amendments to the event notice provisions of the Rule would increase filings submitted by approximately an additional 9% annually. [202] Accordingly, the Commission's staff estimates that the total burden on the MSRB of collecting, indexing, storing, retrieving and disseminating information requested by the public also would increase by approximately 29% or 2,030 hours (7,000 hours x .29). Thus, the Commission's staff estimates that the total burden on the MSRB to collect, store, retrieve, and make available the disclosure documents covered by the proposed amendments to the Rule would be 9,030 hours annually.[203]

4. Annual Aggregate Burden for Proposed Amendments

The Commission's staff estimates that the ongoing annual aggregate information collection burden for the proposed amendments to the Rule would be 83,098 hours.[204]

HSR Report contained data regarding the percentage of merger transactions reported from nine industry segments. Of these nine segments, the only segment that does not issue municipal securities is the banking and insurance industry segment which accounted for 19% of reported merger transactions. The Commission notes that each of the mergers reported under the other industry segments may not involve entities that have issued municipal securities. However, to provide an estimate that is not under-inclusive, the Commission's staff has estimated that all of the reported mergers in the remaining industry segments would involve entities that have issued municipal securities.

[192] *See Two Decades of Bond Finance: 1989–2008,* The Bond Buyer/Thomson Reuters 2009 Yearbook 7 (Matthew Kreps ed., SourceMedia, Inc.) (2009) and *Top 50 Trustee Banks: 2008,* The Bond Buyer/Thomson Reuters 2009 Yearbook 89 (Matthew Kreps ed., SourceMedia, Inc.) (2009).

[193] The Commission's staff based this estimate on the following: 12,000 (estimated number of issuers under proposed amendments) × .31 (31%) (estimated percentage of issuers that would be impacted by a change to the largest trustee of municipal securities) = 3,720 issuers.

[194] The Commission's staff based this estimate on the following: 3,720 (estimated number of issuers that would be impacted by a change to the largest trustee of municipal securities) × 1 (estimated number of event notices that an issuer would file) = 3,720 notices. The Commission staff believes that the actual number of changes involving the trustee that occur annually is significantly less than 3,720. However, to provide an estimate for the paperwork burden that would not be under-inclusive, the Commission's staff has elected to use an estimate that takes into account a change involving the largest trustee.

[195] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[196] 1000 (estimated number of additional notices submitted under change to events materiality condition) + 130 (estimated number of adverse tax event notices under proposed amendments) + 100 (estimated number of tender offers event notices under proposed amendments) + 24 (estimated number of bankruptcy/insolvency event notices under proposed amendments) + 1,783 (estimated number of merger or acquisition event notices under proposed amendments) + 3,720 (estimated number of appointment/change of trustee event notices under proposed amendments) = 6,757 (total number of additional event notices that would be prepared under the proposed amendments to the event notice provisions of the Rule).

[197] 72,000 (number of event notices under proposed amendments modifying the exemption for demand securities exemption) + 6,757 (total number of additional event notices that would be prepared under the proposed amendments to the event notice provisions of the Rule) = 78,757 event notices.

[198] 6,757 (total number of additional event notices that would be prepared under the proposed amendments to the event notice provisions of the Rule) × .75 hours (45 minutes) (estimated time to prepare an event notice under 2008 Amendments Adopting Release) = 5,067.75 hours (rounded to 5,068 hours).

[199] 13,500 hours (estimated burden for issuers to submit annual filings) + 59,068 hours (estimated burden for issuers to submit event notices) + 1,200 hours (estimated burden for issuers to submit failure to file notices) = 73,768 hours.

[200] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[201] *See supra* note 151.

[202] 6,757 (estimated additional event notices under the proposed event notice amendments)/ 77,000 (estimated number of continuing disclosure documents submitted under current Rule (60,000 (event notices) + 15,000 (annual filings) + 2,000 (failure to file notices) = 77,000)) = .087 × 100 = approximately 9%.

[203] Annual burden for MSRB: 7000 hours (annual burden under 2008 Amendments Adopting Release) + 2,030 hours (additional hourly burden under proposed amendments) = 9,030 hours.

[204] 300 hours (total estimated burden for broker-dealers) + 73,768 hours (total estimated burden for issuers) + 9,030 hours (total estimated burden for MSRB) = 83,098 hours. The initial first-year burden would be 83,223 hours: 425 hours (total estimated burden for broker-dealers in the first year) + 73,768

E. Total Annual Cost Burden

1. Broker-Dealers and the MSRB

The Commission does not expect broker-dealers to incur any additional external costs associated with the proposed amendments to the Rule since the proposed amendments do not change the obligation of broker-dealers under the Rule to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices to the MSRB.

The Commission believes that the MSRB may incur costs to modify the indexing system in its EMMA system to accommodate the proposed changes to the Rule that would add additional material disclosure events. Based on information provided to the Commission's staff by MSRB staff in a telephone conversation on November 7, 2008, the MSRB staff estimated that the MSRB's costs to update its EMMA system to accommodate the proposed changes to the material disclosure events of the Rule would be no more than approximately $10,000.[205]

2. Issuers

(a) Current Issuers

The Commission expects that some issuers that currently submit continuing disclosure documents to the MSRB in an electronic format (referred to herein as ''current issuers'') could be subject to some additional costs associated with the proposed amendments to the Rule. For current issuers that convert their annual filings, event notices and/or failure to file notices into the MSRB's prescribed electronic format through a third party there would be costs associated with any additional submissions of event notices and failure to file notices.

The cost for an issuer to have a third-party vendor convert paper continuing disclosure documents into the MSRB's prescribed electronic format could vary depending on what resources are required to transfer the documents into the appropriate electronic format. One example of such a transfer would be the scanning of paper-based continuing disclosure documents into an electronic format. In the 2008 Amendments Adopting Release, the Commission estimated that the cost for an issuer to have a third-party vendor scan documents would be $6 for the first page and $2 for each page thereafter.[206] In the 2008 Amendments Adopting Release, the Commission also estimated that event notices and failure to file notices consist of one to two pages.[207] Accordingly, the approximate cost for an issuer to use a third party vendor to scan an event notice or failure to file notice would be $8 per notice. The Commission believes these estimates are still accurate. In the 2008 Amendments Adopting Release, the Commission estimated that the high end of the estimate for the number of event notices submitted by an issuer annually is three.[208] Under the proposed amendments to the Rule, some current issuers would need to prepare additional event notices for submission to the MSRB. Some current issuers could need to submit these additional event notices to a third party to convert into an electronic format for submission to the MSRB. Under the proposed amendments to the Rule, the Commission's staff estimates that a conservative estimate of the number of additional event notices that an issuer would need to submit annually under the proposed amendments would be one, increasing the total estimate to four.[209] Each of these issuers would incur an annual cost of $8 to convert the additional event notice into an electronic format for submission to the MSRB.[210] The Commission believes that current issuers that already have the technology resources to convert continuing disclosure documents into an electronic format for submission to the MSRB would not incur any additional external costs associated with the proposed amendments to the Rule.

There may be some costs incurred by issuers to revise their current template for continuing disclosure agreements to reflect the proposed amendments to the Rule, if they are adopted. The Commission understands that models currently exist for continuing disclosure agreements that are relied upon by legal counsel to issuers and, accordingly, these documents are likely to be updated by outside attorneys to reflect the proposed amendments, if the Commission should adopt them. Based on a review of industry sources, the Commission believes that continuing disclosure agreements are form agreements. Based on a review of industry sources, the Commission's staff estimates that it would take an outside attorney approximately 15 minutes to revise the template for continuing disclosure agreements for a current issuer, if the proposed amendments are adopted. Thus, the Commission's staff estimates that the approximate cost of revising a continuing disclosure agreement to reflect the proposed amendments for each current issuer would be approximately $100,[211] for a one-time total cost of $1,000,000 [212] for all current issuers, if an outside counsel were used to revise the continuing disclosure agreement.

(b) VRDO Issuers

As discussed above, the Commission's staff estimates that the proposal relating to demand securities would increase the number of issuers affected by the Rule by approximately 20% or 2,000 issuers (referred to herein as ''VRDO issuers''). VRDO issuers may have some external costs associated with the preparation and submission of annual filings, event notices and failure to file notices. Under the Rule, Participating Underwriters are required to reasonably determine that an issuer has entered into a continuing disclosure agreement to provide continuing disclosure documents to the MSRB in an electronic format as prescribed by the MSRB. Under the proposed amendments to the Rule, Participating Underwriters of VRDO issuers would need to reasonably determine that these VRDO issuers have entered into continuing disclosure agreements. The Commission understands that models currently exist for continuing disclosure agreements that are relied upon by legal counsel to issuers and, accordingly, these documents are likely to be updated by

hours (total estimated burden for issuers) + 9,030 hours (total estimated burden for MSRB) = 83,223 hours.

[205] Telephone conversation between Harold Johnson, Deputy General Counsel, MSRB, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, November 7, 2008.

[206] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[207] *Id.*

[208] *Id.*

[209] 6,757 (estimated additional event notices submitted under proposed amendments to event notices)/12,000 (estimated number of issuers under proposed amendments) = .563 notices per issuer (rounded up to 1) (estimated number of additional event notices submitted annually per issuer). To provide an estimate that would not be under-inclusive, the Commission's staff has elected to use an estimate that expects each issuer would submit one additional event notice as a result of the proposed amendments.

[210] $8 (cost to have third party convert an event notice or failure to file notice into an electronic format) × 1 (maximum estimated number of additional event or failure to file notices filed per year per issuer)] = $8.

[211] 1 (continuing disclosure agreement) × $400 (hourly wage for an outside attorney) × .25 hours (estimated time for outside attorney to revise a continuing disclosure document in accordance with the proposed amendments to the Rule) = $100. The $400 per hour estimate for an outside attorney's work is based on the Commission's staff review of industry sources.

[212] $100 (estimated cost to revise a continuing disclosure agreement I accordance with the proposed amendments to the Rule) × 10,000 (number of current issuers) = $1,000,000.

outside attorneys to reflect the proposed amendments, if the Commission should adopt them. Based on a review of industry sources, the Commission believes that continuing disclosure agreements are form agreements. Also, based on a review of industry sources, the Commission's staff estimates that it would take an outside attorney approximately 1.5 hours to draft a continuing disclosure agreement. Thus, the Commission's staff estimates that the approximate cost of preparing a continuing disclosure agreement for each VRDO issuer would be approximately $600,[213] for a one-time total cost of $1,200,000 [214] for all VRDO issuers, if an outside counsel were to prepare the entire agreement.

The Commission believes that VRDO issuers generally would not incur any other external costs associated with the preparation of annual filings, event notices (including those notices for the new event disclosure items included in the proposed amendments) and failure to file notices. The Commission believes that VRDO issuers would prepare the information contained in these continuing disclosure documents internally and that these internal costs have been accounted for in the hourly burden section above.[215]

The Commission believes that the only external costs VRDO issuers could incur in connection with the submission of continuing disclosure documents to the MSRB would be the costs associated with converting them into an electronic format. The Commission believes that many issuers of municipal securities currently have the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB. VRDO issuers that presently do not have the ability to prepare their annual filings, event notices and/or failure to file notices in an electronic format could incur some costs to obtain electronic copies of such documents if they are prepared by a third party (*e.g.*, accountant or attorney) or, alternatively, to have a paper copy converted into an electronic format. These costs would vary depending on how the VRDO issuer elected to convert its continuing disclosure documents into an electronic format. An issuer could elect to have a third-party vendor transfer its paper continuing disclosure documents into the appropriate electronic format. An issuer also could decide to undertake the work internally, and its costs would vary depending on the issuer's current technology resources. An issuer also could elect to use a designated agent to submit its continuing disclosure documents to the MSRB. In the 2008 Amendments Adopting Release, the Commission estimated that 30% of issuers would elect to use designated agents to submit continuing disclosure documents to the MSRB.[216] Generally, when issuers utilize the services of a designated agent, they enter into a contract with the agent for a package of services, including the submission of continuing disclosure documents, for a single fee. Based on a review of industry sources, the Commission's staff estimates this fee to range from $100 to $500 per year depending on which designated agent an issuer uses.[217] Accordingly, the Commission's staff estimates that the high end of the total annual cost that could be incurred by VRDO issuers that use the services of a designated agent would be approximately $300,000.[218]

The cost for an issuer to have a third-party vendor transfer its paper continuing disclosure documents into an appropriate electronic format could vary depending on what resources are required to transfer the documents into the appropriate electronic format. One example of such a transfer would be the scanning of paper-based continuing disclosure documents into an electronic format. In the 2008 Amendments Adopting Release, the Commission estimated that the approximate cost for an issuer to use a third party vendor to scan an event notice or failure to file notice would be $8 per notice, and that the maximum number of event notices or failure to file notices that an issuer would submit annually is three.[219] The Commission still believes these estimates are accurate. Under the proposed amendments to the Rule, the Commission's staff estimates that the maximum number of event notices and failure to file notices submitted by issuers would increase to four.[220] Accordingly, the Commission's staff estimates that the maximum external costs for a VRDO issuer who elects to have a third-party scan continuing event notices or failure to file notices into an electronic format under the proposed amendments would be $32.[221] In the 2008 Amendments Adopting Release, the Commission estimated that the approximate cost for an issuer to use a third party vendor to scan an average-sized annual financial statement would be $64 per annual statement, and that the maximum number of annual filings submitted per year is two.[222] The Commission believes that these estimates are still accurate. The proposed amendments to the Rule would increase the number of issuers submitting annual filings each year. However, the proposed amendments to the Rule would not increase the number of annual filings each issuer submits yearly. Thus, the Commission expects that the number of annual filings submitted yearly, per issuer, under the proposed amendments to the Rule would remain the same. Accordingly, the Commission's staff estimates that the maximum external costs for a VRDO issuer who elects to have a third-party scan annual filings into an electronic format under the proposed amendments would be $128.[223]

Alternatively, a VRDO issuer that currently does not have the appropriate technology to convert paper continuing disclosure documents into an electronic format could elect to purchase the resources to do so.[224] In the 2008

[213] 1 (continuing disclosure agreement) × $400 (hourly wage for an outside attorney) × 1.5 hours (estimated time for outside attorney to draft a continuing disclosure document) = $600. The $400 per hour estimate is based on the Commission's staff review of industry sources.

[214] $600 (cost for continuing disclosure agreement) × 2,000 (number of VRDO issuers) = $1,200,000.

[215] *See supra* Section V.D.

[216] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[217] This estimated range of the annual fee for the services of a designated agent is based on the Commission's staff review of industry sources in December 2008.

[218] 2,000 (number of VRDO issuers) × .30 (percentage of issuers that use designated agents) × $500 (estimated annual cost for issuer's use of a designated agent) = $300,000. In order to provide a total cost estimate that is not under-inclusive the Commission's staff elected to use the higher end of the estimated range of annual fees for designated agent's services.

[219] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[220] 6,757 (estimated additional event notices submitted under proposed amendments)/12,000 (estimated number of issuers under proposed amendments) = .563 notices per issuer (rounded up to 1) (estimated number of additional event notices submitted annually per issuer). To provide an estimate that would not be under-inclusive, the Commission's staff has elected to use an estimate that expects each issuer would submit one additional material event notice as a result of the proposed amendments.

[221] The maximum cost is the cost to scan and convert four material event or failure to file notices: 4 (number of notices submitted annually) × $8.00 (cost to scan and convert each notice) = $32.

[222] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[223] The maximum cost is the cost to scan and convert two annual filings: 2 (number of annual filings submitted annually) × $64.00 (cost to scan and convert each annual filing) = $128.

[224] Generally, the technology resources necessary to transfer a paper document into an electronic format are a computer, scanner and possibly software to convert the scanned document into the appropriate electronic document format. Most scanners include a software package that is capable of converting scanned images into multiple electronic document formats. An issuer would only

Amendments Adopting Release, the Commission estimated that an issuer's initial cost to acquire these technology resources could range from $750 to $4,300.[225] Some VRDO issuers may have the necessary hardware to transmit documents electronically to the MSRB, but may need to upgrade or obtain the software necessary to submit documents to the MSRB in the electronic format that it prescribes. In the 2008 Amendments Adopting Release, the Commission estimated that an issuer's cost to update or acquire this software could range from $50 to $300.[226] The Commission believes these estimates are still accurate.

In addition, VRDO issuers without direct Internet access could incur some costs to obtain such access to submit the documents. In the 2008 Amendments Adopting Release, the Commission noted that Internet access is now broadly available to and utilized by businesses, governments, organizations and the public, and the Commission expects that most issuers of municipal securities currently have Internet access.[227] In the event that a VRDO issuer does not have Internet access, it could incur costs in obtaining such access, which the Commission estimates to be approximately $50 per month, based on its limited inquiries to Internet service providers.[228] Otherwise, there are multiple free or low cost locations that an issuer could utilize, such as various commercial sites, which could help an issuer to avoid the costs of maintaining continuous Internet access solely to comply with the proposed amendments to the Rule.[229]

Accordingly, the Commission estimates that the costs to some of the VRDO issuers to acquire technology necessary to convert continuing disclosure documents into an electronic format to submit to the MSRB could include: (i) An approximate cost of $8 per notice to use a third party vendor to scan an event notice or failure to file notice, and an approximate cost of $64 to use a third party vendor to scan an average-sized annual financial statement, (ii) an approximate cost ranging from $750 and $4,300 to acquire technology resources to convert continuing disclosure documents into an electronic format, (iii) $50 to $300 solely to upgrade or acquire the software to submit documents in an electronic format; and (iv) approximately $50 per month to acquire Internet access. The Commission included these estimates in the 2008 Amendments Adopting Release and the Commission believes that they are still accurate.[230]

For a VRDO issuer that does not have Internet access and elects to have a third party convert continuing disclosure documents into an electronic format (''Category 1''), the total maximum external cost such issuer would incur would be $760 per year.[231] For an issuer that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic format internally (''Category 2''), the total maximum external cost such VRDO issuer would incur would be $4,900 for the first year and $600 per year thereafter.[232] To be conservative for purposes of the PRA, the Commission estimates that any VRDO issuers that incur costs associated with converting continuing disclosure documents into an electronic format would choose the Category 2 option.[233] The Commission's staff estimates that approximately no more than 400 VRDO issuers would incur costs associated with acquiring technology resources to convert continuing disclosure documents into an electronic format.[234] Additionally, the Commission's staff estimates that the estimated maximum annual costs for those VRDO issuers that need to acquire technology resources to submit documents to the MSRB would be approximately $1,960,000[235] for the first year after the adoption of the proposed amendments and approximately $240,000[236] for each year thereafter.

(c) Current and VRDO Issuers

Lastly, some current and VRDO issuers may incur a one-time external cost associated with the proposed amendment to change the timing requirement for submitting event notices in the Rule from ''in a timely manner'' to ''in a timely manner not to exceed ten business days after the occurrence of the event.'' In particular, some current and VRDO issuers may incur a one-time external cost associated with monitoring for a change in the name of the issuer's trustee. One way an issuer may monitor a change in the name of its trustee cost would be to have outside counsel add a notice provision to the issuer's trust indenture requiring the trustee to provide the issuer with notice of any change in the trustee's name. Based on a review of industry sources, the Commission's staff estimates that it would take an outside attorney approximately 15 minutes to draft and add a notice provision for a change in name of the trustee to an indenture agreement. Thus, the Commission's staff estimates that the approximate cost of adding this notice provision to an issuer's trust indenture for each issuer would be approximately $100,[237] for a one-time annual cost of $1,200,000[238] for all issuers.

F. Retention Period of Recordkeeping Requirements

As an SRO subject to Rule 17a–1 under the Exchange Act,[239] the MSRB is

need to purchase software if the issuer (i) has a scanner that does not include a software package that is capable of converting scanned images into the appropriate electronic format, or (ii) purchases a scanner that does not include a software package capable of converting documents into the appropriate electronic format.

[225] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[226] *Id.*

[227] *Id.*

[228] *Id.*

[229] *Id.*

[230] *Id.*

[231] The total maximum external cost for a Category 1 VRDO issuer would be calculated as follows: [$64 (cost to have third party convert annual filing into an electronic format) × 2 (maximum estimated number of annual filings filed per year per issuer)] + [$8 (cost to have third party convert material event notice or failure to file notice into an electronic format) × 4 (maximum estimated number of event or failure to file notices filed per year per issuer)] + [$50 (estimated monthly Internet charge) × 12 months] = $760. The Commission's staff estimates that an issuer would file one to six continuing disclosure documents per year. These documents generally would consist of no more than two annual filings and four event or failure to file notices. The Commission's staff estimates the maximum number of documents filed annually per issuer as follows: 5 documents (consisting of 2 annual filings and 3 event or failure to file notices based on the Commission's estimate from the 2008 Amendment Adopting Release) + 1 document (consisting of the additional event notice that would be filed under the proposed amendments to the Rule).

[232] The total maximum external cost for a Category 2 VRDO issuer would be calculated as follows: [$4300 (maximum estimated one-time cost to acquire technology to convert continuing disclosure documents into an electronic format)] + [$50 (estimated monthly Internet charge) × 12 months] = $4900. After the initial year, issuers who acquire the technology to convert continuing disclosure documents into an electronic format internally would only have the cost of obtaining Internet access. $50 (estimated monthly Internet charge) × 12 months = $600.

[233] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[234] 2,000 VRDO issuers × 20% = 400 VRDO issuers. The Commission used a 20% estimate in the 2008 Amendment Adopting Release. *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104. The Commission believes that this estimate is still appropriate.

[235] 400 (Category 2 issuers) × $4,900 = $1,960,000.

[236] 400 (Category 2 issuers) × $600 = $240,000.

[237] 1 (continuing disclosure agreement) × $400 (hourly wage for an outside attorney) × .25 hours (estimated time for outside attorney to draft and add a change of name notice provision to a trust indenture) = $100. The $400 per hour estimate for an outside attorney's work is based on the Commission's staff review of industry sources.

[238] $100 (estimated cost to have outside counsel add a change of name notice provision to a trust indenture) × 12,000 (number of issuers under the proposed amendments) = $1,200,000.

[239] 17 CFR 240.17a–1.

required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place. The proposed amendments to the Rule would contain no recordkeeping requirements for any other persons.

G. Collection of Information Is Mandatory

Any collection of information pursuant to the proposed amendments to the Rule would be a mandatory collection of information.

H. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information pursuant to the proposed amendments to the Rule would not be confidential and would be publicly available. The collection of information that would be provided pursuant to the continuing disclosure documents under the proposed amendments would be accessible through the MSRB's EMMA system and would be publicly available via the Internet.

I. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments regarding: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the Commission's estimate of the burden of the revised collections of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Commission has submitted to OMB for approval the proposed revisions to the current collection of information titled ''Municipal Securities Disclosure.'' Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609, with reference to File No. S7–15–09, and to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC 20549. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, should refer to File No. S7–15–09, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC 20549.

VI. Costs and Benefits of Proposed Amendment to Rule 15c2–12

The Commission is proposing amendments to Rule 15c2–12 that would amend certain requirements regarding the information that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide to the MSRB. Specifically, the proposed amendments would require a broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has agreed to provide notice of specified events in a timely manner not in excess of ten business days after the event's occurrence, would amend the list of events for which a notice must be provided, and would modify the events that are subject to a materiality determination before triggering a notice to the MSRB. In addition, the amendments would revise an exemption from the rule for certain offerings of municipal securities with put features. These proposed amendments are intended to help improve the availability of timely and important information to investors and other market participants regarding municipal securities, including demand securities, so that investors could make more knowledgeable investment decisions, effectively manage and monitor their investments, and help protect themselves against fraud, and so brokers, dealers, and municipal securities dealers could satisfy their obligation to have a reasonable basis on which to recommend a municipal security.

The Commission is sensitive to the costs and benefits of the proposed rule amendments and requests comment on the costs and benefits of the proposed amendments to Rule 15c2–12 discussed above. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data regarding any such costs or benefits.

A. Benefits

The proposed amendments would modify paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule to provide that a Participating Underwriter must reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide event notices to the MSRB in a timely manner not to exceed ten business days after the occurrence of the event. The current provisions of the Rule state that a Participating Underwriter must reasonably determine that the continuing disclosure agreement provides that event notices are to be provided ''in a timely manner'' to the MSRB in an electronic format. As discussed above, the Commission preliminarily believes that more timely availability of such significant information would assist investors in making better informed investment decisions and should help reduce instances of fraud. The Commission also anticipates that, in providing for a maximum time frame within which event notices should be disclosed under a continuing disclosure agreement, the proposed amendment should foster the availability of up-to-date information about municipal securities, thereby further promoting greater transparency and investor confidence in the municipal securities market as a whole, and assisting investors to better protect themselves against fraud. Moreover, brokers, dealers and municipal securities dealers should be able to more readily carry out their responsibilities under the securities laws. The Commission believes that the proposed change regarding the maximum time frame for submission of event notices should continue to provide an issuer with adequate time to become aware of the event and, pursuant to its undertaking, submit notice of the event's occurrence to the MSRB. In proposing that event notices be provided ''in a timely manner not in excess of ten business days after the occurrence of the event,'' the Commission intends to strike a balance between the need for such information to be disseminated promptly and the need to allow adequate time for an issuer to become aware of the event and to prepare and file such a notice. The Commission preliminarily believes that the proposed time frame of ten business days after the occurrence of the event would provide a reasonable amount of time for issuers to comply with their

obligations under their continuing disclosure agreements, while also allowing event notices to be made available to investors in a more timely manner. The Commission notes that issuers would not be precluded from submitting subsequent notices as additional information relating to the event becomes available.

The proposed amendments would modify subparagraph (b)(5)(i)(C)(6) of the Rule to require a Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice to the MSRB of the issuance of proposed and final determinations of taxability, Notices of Proposed Issue (IRS form 5701–TEB), or other material notices or determinations with respect to the tax-exempt status of securities by the Internal Revenue Service, as well as adverse tax opinions and other events affecting the tax-exempt status of such securities. As discussed earlier, the Commission believes that the tax-exempt status of municipal securities is of significant importance to investors and other participants in the municipal securities market.[240] The Commission believes that this tax-exempt status has a significant impact on the value of municipal securities, as well as on the potential tax liability a municipal security holder may incur if such status were to change. Accordingly, the Commission believes that this amendment to subparagraph (b)(5)(i)(C)(6) of the Rule would clarify a Participating Underwriter's obligation to determine that the issuer has undertaken in its continuing disclosure agreements to provide notice of these events that could affect the tax-exempt status of its municipal securities.

The Commission is proposing to delete the condition in paragraph (b)(5)(i)(C) of the Rule that presently provides that notice of all of the listed events need be made only ''if material.'' The Commission has reviewed each of the Rule's current disclosure event items and determined six instances in which no materiality evaluation should be necessary.[241] Issuers would not need to undertake the determination of materiality for these six events, which should help speed the disclosure of these events to investors and the public and eliminate the costs presently required of an issuer to make such a determination.

The proposed amendments would add tender offers to subparagraph (b)(5)(i)(C)(8) of the Rule, which currently covers bond calls.[242] The Commission believes that the need to reach all investors with important information regarding a tender offer, which necessitates that an investor decide whether or not to tender within the prescribed time period, makes its proposed addition to the Rule appropriate. As a result, the proposal would help improve the ability of issuers and other obligated persons to communicate tender offers to bondholders effectively and of bondholders to respond within the tender offer period. In addition, the proposed amendment to subparagraph (b)(5)(i)(C)(8) of the Rule could help eliminate the possibility of any investor confusion regarding whether a certain municipal security is the subject of a tender offer. In all these ways, the availability of this information would help investors protect themselves from misrepresentation and fraud, and would also aid brokers, dealers and municipal securities dealers to satisfy their obligation to have a reasonable basis to recommend a municipal security.

The proposed addition of subparagraph (b)(5)(i)(C)(12) to the Rule would require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice to the MSRB, upon its bankruptcy, insolvency, receivership or similar event.[243] The Commission notes that, while bankruptcy, insolvency, receivership or similar event of the issuer or obligated person are uncommon in the municipal market, these events can have a significant impact on the price of the municipal issuer's securities. The Commission believes that the potential severity of the consequences to investors from bankruptcy, insolvency, receivership or similar event of the issuer or obligated person, and the corresponding benefit of the availability of that information to help prevent fraud, supports its proposal that the Participating Underwriter should be required to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide notice to the MSRB if such an event should occur.

In addition, the proposed amendments would add subparagraph (b)(5)(i)(C)(13) to the Rule, which would require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice to the MSRB, if material, of the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms.[244] As with bankruptcy, insolvency, receivership or similar event of the issuer or obligated person, there can be a potential impact on the price of a municipal security as a result of the consummation of a material merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms. In such a circumstance, the Commission believes that the proposed amendment would help to ensure that investors and other market participants could obtain knowledge of the identity of the entity that would have responsibility for municipal security repayment obligations after the transaction is consummated. In addition, investors and other market participants would have the opportunity to review the creditworthiness and other aspects of the acquiring entity that would support repayment of the security following the transaction. Thus, the proposed amendment would help to prevent fraud.

Proposed subparagraph (b)(5)(i)(C)(14) to the Rule would add the appointment of a successor or additional trustee or the change of name of a trustee to the list of events contained in the Rule, if material. As discussed earlier, the Commission believes that the trustee of a municipal security performs important functions for investors in that security.[245] The Commission notes that the proposed amendment would benefit investors by helping to ensure that the continuing disclosure agreement would provide that investors be made aware of the identity of and contact information for the most current trustee for a municipal security and that any changes to the trustee's identity would be made

[240] *See supra* Section II.C.

[241] These events are: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.

[242] *See supra* Section II.E.1.

[243] *See supra* Section II.E.2.

[244] *See supra* Section II.E.3.

[245] *See supra* Section II.E.4.

known to investors in a timely manner, not in excess of ten business days of the event's occurrence.

Further, the Commission proposes to modify the exemption in the Rule for demand securities. As discussed above, when the Commission adopted this exemption, demand obligations made up a relatively small portion of the municipal market.[246] Recently, issuances of demand securities have increased.[247] The Commission believes that it is important that there be greater information regarding these securities available to investors, market professionals, and the public generally. Accordingly, the Commission believes that modifying the Rule's exemption for demand securities would be beneficial to investors and the prevention of fraud. The modification of the Rule's exemption for demand securities would provide investors with notice of the events set forth in the Rule regarding demand securities that may not have been available previously. In addition, this proposal would restrict a broker, dealer or municipal securities dealer from making recommendations regarding such securities unless it has procedures in place that provide reasonable assurance that it would receive prompt notice of the events set forth in the Rule,[248] which should benefit investors because the broker, dealer or municipal securities dealer should have available to it continuing disclosure information regarding the demand obligation it recommends.

The Commission believes that the proposed amendments would benefit individual and institutional investors who would be able to obtain greater information about municipal securities that they could use to make informed investment decisions. Moreover, this information would aid investors by helping them to determine that they are not the subject of fraudulent or manipulative acts or practices with respect to municipal security transactions. In addition, the Commission believes that the proposed amendments could assist broker-dealers and others, such as mutual funds, with their compliance with regulatory requirements because they would have access to greater information about municipal securities. Moreover, municipal securities vendors could benefit from the proposed amendments because additional information about municipal securities and their issuers would be made available, which they then could use in developing or enhancing value-added products to offer to interested parties.

In the Commission's view, the proposed amendments would have a positive impact on the municipal securities market and participants in that market sector. It is possible that, with more information available to market professionals, individual investors, and others regarding municipal securities, including VRDOs, there could be greater competition in the marketplace with respect to the offer and sale of municipal securities, to the benefit of these individuals and entities. Greater information enhances the ability of market professionals, investors and others to make investment-related decisions about particular municipal securities, which in turn can promote competition in the marketplace. Moreover, individual and institutional investors might take into account the fact that more information would be available about municipal securities, including VRDOs, when they decide whether to purchase municipal securities.

The Commission seeks comment on the anticipated benefits of the proposed amendments.

B. Costs

1. Broker-Dealers

The proposed amendments to paragraph (b)(5)(i)(C) of the Rule would add events that would require Participating Underwriters to reasonably determine that issuers or obligated persons agreed to provide notice of and would specify the maximum time period in which such notices would need to be submitted to the MSRB. The Commission does not believe that the proposed amendments to paragraph (b)(5)(i)(C) of the Rule would cause broker-dealers to incur any additional recurring external or internal costs in connection with their implementation, if the proposals are adopted, because they would not significantly alter the existing Rule's requirements for broker-dealers. Under the Rule, broker-dealers already must reasonably determine that issuers or obligated persons have undertaken to provide notice of specified events in their continuing disclosure agreements and the addition of a few more events that would require notice to the MSRB and the addition of a provision regarding the timeliness of such notices should not significantly increase broker-dealers' obligations and thus their costs. As noted above, continuing disclosure documents generally are form documents. The broker-dealer must reasonably determine that provisions relating to the issuer's or obligated person's undertaking to provide notice of those events that are specified in the current Rule, as well as those events that are proposed to be added to the Rule, are contained in the continuing disclosure agreement.

The proposed amendments also would modify the Rule's exemption for demand securities. The Commission preliminarily believes that these proposed amendments would not result in any external recurring costs for broker-dealers but could result in their incurring a small increase in internal recurring costs because these proposals would increase the number of municipal securities offerings subject to paragraphs (b)(5) and (c) of the Rule. The proposed deletion of paragraph (d)(1)(iii) of the Rule and the addition of new paragraph (d)(5) to the Rule, would modify an exemption from the Rule for primary offerings of demand securities. As noted above, the Commission's staff estimates that the modification of this exemption from the Rule would increase the number of issuers with municipal securities offerings subject to the Rule by 20%.[249] The Commission's staff estimates that the annual information collection burden for each broker-dealer under this proposed amendment to the Rule would be 1.20 hours (1 hour and 12 minutes).[250] Accordingly, the Commission's staff estimates that it would cost each broker-dealer $324 annually to comply with the Rule, which represents a cost increase of $54 annually over each broker-dealer's current annual cost to comply with the Rule.[251]

In addition, the Commission's staff estimates that a broker-dealer could have a one-time internal cost associated with having an in-house compliance attorney prepare and issue a memorandum advising the broker-dealer's employees about the proposed revisions to Rule 15c2–12. The Commission's staff estimates it would take internal counsel approximately 30

[246] *See supra* Section II.A.

[247] *Id.*

[248] *See* 17 CFR 240.15c2–12(c).

[249] *See supra* Section V.D.1.a.

[250] *Id.*

[251] 1.20 hours (estimated annual information collection burden for each broker-dealer) × $270 (hourly cost for a broker-dealer's internal compliance attorney) = $324. The hourly rate for the compliance attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. Cost increase for Broker-Dealers under the proposed amendments to the Rule: $324 (annual cost under amended rule) − $270 (annual cost under current Rule) = $54. This estimated cost for broker-dealers also accounts for their review of continuing disclosure agreements in connection with remarketings of VRDOs that are primary offerings.

minutes to prepare this memorandum,[252] for a cost of approximately $135.[253] The Commission further believes that the ongoing obligations of broker-dealers under the Rule would be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles internally.

The Commission seeks comment on any other potential costs that may result from the proposal amendments, including whether there would be any change to the cost of underwriting variable rate demand obligations or other types of municipal securities for which greater information would be available as a result of the Commission's proposals and, if so, whether there would be any effect on a broker-dealer's business and revenues. The Commission seeks comment on whether the proposed amendments would adversely affect the ability of broker-dealers to serve as Participating Underwriters in municipal securities offerings, particularly in the case of offerings of variable rate demand obligations. While the Commission does not anticipate that there would be any adverse consequences to a broker-dealer's business, activities or financial condition as a result of the proposed amendments, it seeks commenters' views regarding the possibility of any such impact. The Commission requests comment on any direct or indirect costs broker-dealers could incur as a result of the proposed amendments and asks commenters to quantify those costs, where possible.

2. Issuers

(a) Current Issuers

The Commission expects that some current issuers could be subject to some internal and external costs associated with the proposed amendments to the Rule. As noted above, the proposed revisions to the Rule regarding the time period for submission of event notices and regarding the materiality condition for such notices would not change the substance of an event notice, the method for filing an event notice, or the location to which an event notices would be submitted.[254] Accordingly, the Commission preliminarily does not believe that issuers would incur any costs associated with the proposed change to the timing provision of the Rule, except to the extent that some issuers may need to submit notices more speedily than they do currently and may need to be cognizant of events not within their direct control, such as a rating change, that would prompt submission of an event notice. The Commission preliminarily believes that the costs for current issuers would result from the proposed amendments to the Rule associated with the proposed new and modified event notice provisions and the elimination of the materiality determination for certain event notices in the current Rule.[255] Current issuers would incur internal costs associated with the preparation of the additional event notices that may result from these proposed changes to the event notice provisions of the Rule. Current issuers also would incur costs if they issue demand obligations, as discussed below.

For current issuers that convert their annual filings, event notices and/or failure to file notices into the MSRB's prescribed electronic format through a third party there would be additional costs associated with any additional submissions of event notices and failure to file notices. As noted above, the Commission estimates that each current issuer would submit one additional event notice annually as a result of the proposed amendments.[256] If the current issuer uses a third-party vendor to scan the additional event notice into an electronic format for submission to the MSRB, the Commission estimates that such issuer would have an additional annual cost of $8 per notice.[257] For current issuers that convert their annual filings, event notices and/or failure to file notices into the MSRB's prescribed electronic format internally there would be no additional external costs associated with the conversion of the event notice into the MSRB's prescribed electronic format.

As discussed above,[258] some current issuers may incur a one-time cost of $100 associated with the need to revise the template for continuing disclosure agreements, if the proposed amendments are adopted.[259]

The Commission also believes that current issuers could incur some internal labor costs associated with the preparation and submission of the additional event notice. As discussed above,[260] the Commission's staff estimates that a current issuer would submit a maximum of one additional event notice annually.[261] Thus, the Commission staff estimates that the maximum annual labor cost to prepare and submit the additional event notice is approximately $47 per current issuer.[262]

The Commission seeks comment on any other costs that the proposed addition of several new event items, the proposed maximum time frame to submit event notices, and the revisions with respect to the materiality condition would have on issuers. While the Commission preliminarily does not believe that these proposals would have a significant cost impact on issuers, it seeks commenters' views on any direct or indirect cost consequences as a result of the proposals. For example, would the proposed amendments in any way make it more likely or less likely for issuers to obtain needed financing or to obtain a broker-dealer to conduct a primary offering on their behalf? Would there be any costs incurred by investors, market professionals or others as a result of the proposed amendments? Are

[252] *See supra* Section V.D.1.c.

[253] .5 hours (estimated annual information collection burden for each broker-dealer) × $270 (hourly cost for a broker-dealer's internal compliance attorney) = $135. The hourly rate for the compliance attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified by the Commission's staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[254] *See supra* Section V.D.2.b.i. *See infra* Section V.I.B.2.b. for a discussion of the costs associated with an increase in the number of issuers as a result of the proposed amendment modifying the exemption for demand securities.

[255] As to two of the proposed new events, the amendments would include a materiality determination. Such a materiality determination could result in costs to investors, market professionals and others to the extent the issuer or obligated person determined that the event was not material and thus did not submit a notice to the MSRB. If investors, market professionals and others would have considered the information important and had access to it, they might have made a different investment decision.

[256] *See supra* Section V.E.2.a.

[257] *Id.*

[258] *Id.*

[259] *Id.* The Commission's staff estimates that there is an approximate cost of $100 associated with revising each continuing disclosure agreement by the current issuer's outside counsel. Thus, the total cost for revising continuing disclosure agreements for all current issuers by the current issuers' outside counsel would be approximately $1,000,000.

[260] *Id.*

[261] This estimate includes additional event notices that may be submitted as a result of the proposed modification of the materiality condition in paragraph (b)(5)(i)(C) of the Rule.

[262] 1 (maximum estimated number of additional material event notices submitted per year per issuer) × $63 (hourly wage for a compliance clerk) × .75 hours (45 minutes) (estimated time for compliance clerk to prepare and submit a material event notice) = $47.25 (rounded to $47). The $63 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2008, modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. In order to provide an estimate of total costs for issuers that would not be under-inclusive, the Commission's staff elected to use the higher end of the estimate of annual submissions of continuing disclosure documents. *See supra* note 220.

there other internal or external costs not identified by the Commission that could result from the proposed amendments? The Commission requests comment on any direct or indirect costs issuers could incur as a result of the proposed amendments and asks commenters to quantify those costs, where possible.

(b) VRDO Issuers

As discussed above, the Commission estimates that the proposed modification of the Rule's exemption for demand securities would increase the number of issuers affected by the Rule by approximately 20% or 2,000 issuers.[263] These VRDO issuers may have some costs associated with the preparation and submission of continuing disclosure documents. As discussed above, the Commission believes that each VRDO issuer may have a one-time external cost of $600 associated with entering into a continuing disclosure agreements.[264] The Commission believes that the only other external costs for VRDO issuers would be the costs associated with converting continuing disclosure documents into an electronic format to submit to the MSRB. As noted earlier, the Commission believes that many issuers of municipal securities currently have the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB.[265] VRDO issuers that presently do not have the ability to prepare their annual filings, event notices and/or failure to file notices in an electronic format could incur some costs to obtain electronic copies of such documents if they are prepared by a third party (*e.g.,* accountant or attorney) or, alternatively, to have a paper copy converted into an electronic format. These costs would vary depending on how the VRDO issuer elected to convert its continuing disclosure documents into an electronic format. An issuer could elect to have a third-party vendor transfer its paper continuing disclosure documents into the appropriate electronic format. An issuer also could decide to undertake the work internally, and its costs would vary depending on the issuer's current technology resources. An issuer also could use the services of a designated agent to submit its continuing disclosure documents to the MSRB. In the 2008 Amendments Adopting Release, the Commission noted that approximately 30% of municipal issuers rely on the services of a designated agent to submit continuing disclosure documents for them.[266] Generally, when issuers utilize the services of a designated agent, they enter into a contract with the agent for a package of services, including the submission of continuing disclosure documents, for a single fee. As noted above, the Commission's staff estimates that the annual fees for designated agents range from $100 to $500 per issuer, for a total maximum annual cost of $300,000 for all VRDO issuers.[267]

As noted above, the Commission estimates that the costs to some of the VRDO issuers may incur costs associated with converting continuing disclosure documents into an electronic format to submit to the MSRB. These costs could include: (i) An approximate cost of $8 per notice to use a third party vendor to scan a event notice or failure to file notice, and an approximate cost of $64 to use a third party vendor to scan an average-sized annual financial statement, (ii) an approximate cost ranging from $750 and $4,300 to acquire technology resources to convert continuing disclosure documents into an electronic format, (iii) $50 to $300 solely to upgrade or acquire the software to submit documents in an electronic format; and (iv) approximately $50 per month to acquire Internet access.[268]

For a VRDO issuer that does not have Internet access and elects to have a third party convert continuing disclosure documents into an electronic format (''Category 1''), the total maximum external cost such issuer would incur would be $760 per year.[269] For an issuer that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic format internally (''Category 2''), the total maximum external cost such VRDO issuer would incur would be $4,900 for the first year and $600 per year thereafter. As noted above, in order to provide a conservative cost estimate, the Commission has estimated that any VRDO issuer that incurs costs associated with converting continuing disclosure documents into the MSRB's prescribed electronic format would choose the more expensive Category 2 approach.[270] The Commission's staff estimates that approximately 400 VRDO issuers would incur costs associated with acquiring technology resources to convert continuing disclosure documents into an electronic format.[271] Additionally, the Commission's staff estimates that the maximum annual costs for those VRDO issuers that need to acquire technology resources to submit documents to the MSRB would be approximately $1,960,000 for the first year after the adoption of the proposed amendments and approximately $240,000 for each year thereafter.[272]

Although the Commission preliminarily does not believe that there are any additional costs to issuers or obligated persons of VRDOs as a result of the proposed amendments, it requests comment regarding any possible direct or indirect costs that such issuers could incur, such as any potential impact on underwriting fees, interest costs, or other costs generally. Would the proposed amendments adversely affect the business, activities or financial condition of VRDO issuers or obligated persons, their ability to engage broker-dealers to underwrite or to act as remarketing agents of VRDOs, or to engage financial advisors?

(c) Current and VRDO Issuers

Lastly, as discussed above, some current and VRDO issuers may incur a one-time external cost associated with the proposed amendment to change the timing requirement for submitting event notices in the Rule from ''in a timely manner'' to ''in a timely manner not to exceed ten business days after the occurrence of the event.'' In particular, some current and VRDO issuers may incur a one-time external cost associated with monitoring for a change in the name of the issuer's trustee. One way an issuer may monitor a change in the name of its trustee cost would be to have outside counsel add a notice provision to the issuer's trust indenture requiring the trustee to provide the issuer with notice of any change in the trustee's name. The Commission's staff estimates that the approximate cost of adding this notice provision to an issuer's trust indenture for each issuer would be approximately $100,[273] for a one-time annual cost of $1,200,000[274] for all issuers.

[263] *See supra* Section V.D.2.a.

[264] *See supra* Section V.E.2.b. The Commission's staff has estimated that there is an approximate cost of $600 associated with drafting each continuing disclosure agreement by the VRDO issuer's outside counsel. Thus, the total cost for preparing continuing disclosure documents for all VRDO issuers by the VRDO issuers' outside counsel would be approximately $1,200,000.

[265] *Id.*

[266] *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[267] *See supra* Section V.E.2.b.

[268] *Id.*

[269] *See supra* note 231.

[270] *See supra* Section V.E.2.b.

[271] 2000 VRDO issuers × 20% = 400 VRDO issuers. *See* 2008 Amendments Adopting Release, *supra* note 11, 73 FR 76104.

[272] *See supra* Section V.E.2.b.

[273] *See supra* note 237.

[274] *See supra* note 238.

The Commission requests comment on any direct or indirect costs issuers or obligated persons could incur as a result of the proposed amendments and asks commenters to quantify those costs, where possible.

3. MSRB

Since the number of continuing disclosure documents submitted would increase as a result of the proposed amendments, the MSRB could incur costs associated with the proposed amendments. The Commission's staff estimates that these costs for the MSRB may include: (i) the cost to hire additional clerical personnel at an estimated annual cost of $127,890 to process the additional submissions associated with the proposed amendments to the Rule [275] and (ii) the cost to update its EMMA system to accommodate indexing information in connection with the proposed changes to the material disclosure events of the Rule. Based on information provided to Commission staff by MSRB staff in a telephone conversation on November 7, 2008, the MSRB staff estimated that the MSRB's costs to update its EMMA system to accommodate the proposed changes to the material disclosure events of the Rule would be approximately $10,000.[276] Therefore, in connection with the proposed amendments the MSRB would incur a one-time cost of approximately $10,000 as well as a recurring annual cost of approximately $127,890.[277]

Given that the MSRB has provided a preliminary estimate of the costs that it would incur in connection with the proposed amendments, the Commission does not believe that there are any other direct or indirect additional costs that the MSRB may incur as a result of the proposals. The Commission seeks comment on all direct and indirect costs that its proposals would impose on the MSRB and requests that those costs be quantified, where possible.

[275] 2,030 hours (estimated additional annual number of hours worked by a compliance clerk) × $63 (hourly wage for a compliance clerk) = $127,890 (annual salary for compliance clerk). The $63 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2008, modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The estimate for additional annual hours worked by a compliance clerk is the estimated additional hourly burden the MSRB would incur on an annual basis under the proposed amendments to the Rule. *See* Section V.D.

[276] Telephone conversation between Harold Johnson, Deputy General Counsel, MSRB, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, November 7, 2008.

[277] *See supra* notes 261 and 262.

C. Request for Comment on Costs and Benefits

The Commission preliminarily believes that any additional burden or costs on broker-dealers, issuers, and the MSRB as a result of the proposed amendments would be justified by the improved availability of information to broker-dealers, mutual funds that hold municipal securities, analysts and other market professionals, institutional and retail investors, vendors of municipal securities information, and the public generally, all of which contribute to investors' ability to make more knowledgeable investment decisions, effectively manage and monitor their investments, and protect themselves from misrepresentation and fraud. This availability also would contribute to brokers, dealers and municipal securities dealers' reasonable basis to recommend the purchase or sale of municipal securities. To assist the Commission in evaluating the costs and benefits that could result from the proposed amendments to the Rule, the Commission requests comments on the potential costs and benefits identified in this proposal, as well as any other costs or benefits that could result from the proposed amendments to the Rule. In particular, comments are requested on whether there are costs or benefits to any entity not identified above. Commenters should provide analysis and data to support their views on the costs and benefits. In particular, the Commission requests comment on the costs and benefits of the proposed amendments on broker-dealers, issuers, the MSRB, other municipal securities information vendors, as well as any costs on others, including market participants and investors.

VII. Consideration of Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [278] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act [279] requires the Commission, when adopting rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments to the Rule would revise paragraph (b)(5) of Rule 15c2–12 to require Participating Underwriters to reasonably determine that the issuer or obligated person has agreed at the time of a primary offering: (i) To provide notice of the events listed in paragraph (b)(5)(i)(C) of the Rule in a timely manner, but not later than ten business days after the occurrence of the event; [280] and (ii) to expand the list of events in paragraph (b)(5)(i)(C) of the Rule to include the following: the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of the securities; a tender offer; bankruptcy, insolvency, receivership or similar event of the issuer or obligated person; and the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material. The proposed amendments would delete the materiality condition for some, but not all, of the events currently listed in paragraph (b)(5)(i)(C) of the Rule. In addition, the proposed amendments would narrow the exemption currently contained in paragraph (d)(1)(iii) of the Rule for demand securities, by deleting paragraph (d)(1)(iii), and adding paragraph (d)(5) to the Rule to make the event disclosure provisions contained in section (b)(5)(i)(C) of the Rule applicable to this category of municipal securities.

As discussed below, the Commission preliminarily believes that the proposed amendments to the Rule should help make the municipal disclosure process more efficient because of the proposed new events to be added to paragraph (b)(5)(i)(C) of the Rule; the proposal that submissions of event notices to the MSRB must be made in a timely manner not in excess of ten business days of the event's occurrence; and the proposed

[278] 15 U.S.C. 78c(f).

[279] 15 U.S.C. 78w(a)(2).

[280] The Commission proposes a similar revision to the limited undertaking in paragraph (d)(2)(ii)(B) of the Rule to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit event notices to the MSRB ''in a timely manner not in excess of ten business days after the occurrence of the event,'' instead of ''in a timely manner'' as the Rule currently provides.

modification of the exemption for demand securities through the elimination of paragraph (d)(1)(iii) of the Rule, and the addition of paragraph (d)(5) to the Rule. Currently, the Rule does not contain a specific time frame within which a continuing disclosure agreement must specify that event notices will be provided to the MSRB. Thus, the Commission believes the proposed change should help individuals or entities interested in obtaining information about events relating to municipal issuers to obtain this information from the MSRB within a specific time frame of the event's occurrence. In addition, certain events regarding municipal securities that may be important to investors, such as certain tender offers or the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material, are not currently included in the Rule. Further, certain events listed in paragraph (b)(5)(i)(C) of the rule would need to be disclosed, without the issuer having to make a materiality determination. Moreover, the Rule currently contains an exemption for demand securities, which means that broker-dealers are not required to reasonably determine that the issuer or obligated person has undertaken to provide the information set forth in paragraph (b)(5) of the Rule. As a consequence of the proposed amendments, greater information about municipal securities and their issuers should be more readily accessible on a more-timely basis to broker-dealers, mutual funds, analysts and other market professionals, institutional and retail investors, and the public generally. Thus, these individuals and entities should be able to obtain greater information about municipal securities within a specific ten business day time frame, which could aid them in making better informed and more efficient investment decisions and should help reduce instances of fraud.

The Commission preliminarily believes that this proposal could promote competition in the purchase and sale of municipal securities because the greater availability and timeliness of information as a result of the proposed amendments could instill greater investor confidence in the municipal securities market. As a result, more investors could be attracted to this market sector and broker-dealers and municipal issuers could compete for their business. The proposed amendments also could encourage improvement in the completeness and timeliness of issuer disclosures and could foster additional interest in municipal securities by retail and institutional customers. In addition, the greater availability of information about municipal securities would be beneficial to vendors of municipal securities information as they develop their value-added products. Thus, the proposed amendments could promote competition among those vendors of municipal securities information that could utilize the information provided to the MSRB pursuant to continuing disclosure agreements and would compete with each other in creating and offering for sale value-added products relating to municipal securities. As discussed above,[281] the proposed amendments to the Rule could result in some additional cost and hourly burdens for broker-dealers, issuers and the MSRB. However, the Commission preliminarily believes that these increased burdens are justified by the positive competitive impact of the proposed amendments to the Rule. Accordingly, the Commission preliminarily does not believe that the proposed amendments would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments to the Rule would provide investors and other municipal market participants with notice of additional events, to be provided in a timely manner not in excess of ten business days of the event's occurrence, which could have an impact on the value of the applicable municipal security. In addition, the proposed amendments would help to provide investors and other municipal market participants with access to important information about demand securities that previously were not subject to the Rule's disclosure provisions. The Commission believes that these proposals should help improve investors' ability to make informed investment decisions, which, in turn, should help promote capital formation generally. The proposed amendments could have a positive effect on capital formation because the greater availability of information about municipal securities could provide institutional and retail investors with more complete information regarding these securities. As a result, investors could be more comfortable that they would have better access to important information about a particular municipal security when deciding whether to purchase that security.

Based on the analysis above, the Commission preliminarily believes that the proposed amendments to the Rule would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed amendments to the Rule would place a burden on competition, as well as the effect of the proposed amendments on efficiency, competition, and capital formation. The Commission specifically seeks comment on whether the proposed amendments would place a burden on competition or have an effect on efficiency, competition, and capital formation with respect to issuers or obligated persons, the MSRB, broker-dealers, other market participants, investors, or others.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [282] the Commission must advise the OMB as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The Commission requests comment on the potential impact of the proposed rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with the provisions of the Regulatory Flexibility Act (''RFA'').[283] It relates to proposed amendments to Rule 15c2–12,[284] under the Securities Exchange Act of 1934, as amended.[285] The proposed amendments would

[281] *See supra* Sections V. and VI.

[282] Public Law No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[283] 5 U.S.C. 603(a).

[284] 17 CFR 240.15c2–12.

[285] 15 U.S.C. 78a *et seq.*

amend certain requirements regarding the information that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the beneficial holders of the issuer's municipal securities, to provide, and revise an exemption from the rule. Specifically, the amendments would require a broker, dealer, or municipal securities dealer (or ''Participating Underwriter,'' when used in connection with primary offerings), to reasonably determine that an issuer or obligated person has agreed to provide notice of specified events in a timely manner not in excess of ten business days of the occurrence of the event and amend the list of events for which notices would be provided. In addition, the proposal would modify the condition that event notices be submitted to the Municipal Securities Rulemaking Board, ''if material,'' for some, but not all, of the Rule's specified events. Further, the amendments would modify an exemption from the rule for certain offerings of municipal securities with put features, by making the offering of such securities subject to continuing disclosure obligations set forth in the Rule.

A. Reasons for the Proposed Action

The main purpose of the proposal is to improve the availability of significant and timely information to the municipal securities markets and to help deter fraud and manipulation in the municipal securities market by prohibiting the underwriting and subsequent recommendation of transactions in municipal securities for which adequate information is not available on an ongoing basis.

The Commission proposes to modify paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of Rule 15c2–12 to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to provide event notices to the MSRB in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days after the occurrence of any such event, instead of ''in a timely manner'' as the Rule currently provides. In 1994, the Commission adopted amendments to Rule 15c2–12 and noted that it had not established a specific time frame with respect to ''timely'' because of the wide variety of events and issuer circumstances.[286] However, the Commission stated that, in general, this determination must take into consideration the time needed to discover the occurrence of the event, assess its materiality, and prepare and disseminate the notice.[287] It has been reported that there have been some instances in which event notices were not submitted until months after the events occurred.[288] The Commission believes that delays deny investors important information that they need in order to make informed decisions regarding whether to buy, sell, or hold their municipal securities and to aid them in determining whether the price that they pay or receive for their transactions is appropriate.[289]

The Commission preliminarily believes that codifying in the Rule a specific time within which event notices would be provided, in accordance with the continuing disclosure agreement, to the MSRB should result in these notices being made available more promptly than at present. Accordingly, the proposed amendments would require a broker, dealer, or municipal securities dealer (*i.e.,* a Participating Underwriter) to reasonably determine that an issuer or obligated person has agreed, in a continuing disclosure agreement, to provide notice of specified events in a timely manner not in excess of ten business days after the event's occurrence. The Commission believes this change would help promote more timely disclosure of this important information to municipal security investors.

The Commission proposes to modify paragraph (b)(5)(i)(C)(6) of the Rule, which presently requires Participating Underwriters reasonably to determine that the issuer or obligated person has entered into a continuing disclosure agreement to submit a notice for ''[a]dverse tax opinions or events affecting the tax-exempt status of the security.'' The proposal would revise paragraph (b)(5)(i)(C)(6) of the Rule also to provide for the disclosure of the issuance of material ''proposed or final determinations of taxability, Notices of Proposed Issue (IRS form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of securities'' by the IRS to the MSRB under a continuing disclosure agreement. A determination by the IRS that interest on a municipal security may, in fact, be taxable not only could reduce the security's market value, but also could adversely affect each investor's federal and, in some cases, state income tax liability.[290] The tax-exempt status of a municipal security is also important to many mutual funds whose governing documents, with certain exceptions, limit their investments to tax-exempt municipal securities.[291] Therefore, retail and institutional investors alike are extremely interested in events that could adversely affect the tax-exempt status of the municipal securities that they own or may wish to purchase.[292]

The Commission is proposing that no determination of materiality would be necessary for the following six existing events: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.[293] The Commission preliminarily believes that these events are of such a high level of importance to investors that notice of their occurrence should always be included in a continuing disclosure agreement. Furthermore, the Commission preliminarily believes that eliminating the necessity to make a materiality decision upon the occurrence of these events would simplify issuer compliance with the terms of continuing disclosure agreements to which they are a party and would help to make such filings available more quickly.

The proposal also would add the following events, for which disclosure notices would be provided pursuant to a continuing disclosure agreement: (i) Tender offers (paragraph (b)(5)(i)(C)(8) of the Rule);[294] (ii) bankruptcy, insolvency, receivership or similar event of the issuer or obligated person (paragraph (b)(5)(i)(C)(12) of the Rule);[295] (iii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake

[286] *See* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590, 59601 (November 17, 1994) (''1994 Amendments'').

[287] *Id.*

[288] *See supra* Section II.B.

[289] *Id.*

[290] *See supra* Section II.D.

[291] *Id.*

[292] *Id.*

[293] *Id.*

[294] *See supra* Section II.E.1.

[295] *See supra* Section II.E.2.

such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material (paragraph (b)(5)(i)(C)(13) of the Rule);[296] and (iv) appointment of a successor or additional trustee, or the change of name of a trustee (paragraph (b)(5)(i)(C)(14) of the Rule), if material.[297] The Commission believes that there is a need to make available to all investors such important information affecting their decisions and the value of their securities. The Commission believes that the proposed addition of these four events disclosure items would substantially improve the availability of important information in the municipal securities market.

Finally, the proposal would modify the Rule's exemption for demand securities by eliminating paragraph (d)(1)(iii) to Rule 15c2–12, and adding new paragraph (d)(5) to the Rule. The Commission's experience with the operation of the Rule and changes in the municipal securities market over the last fourteen years suggests a need to increase the availability of information to investors regarding demand securities.[298] Furthermore, the recent period of turmoil in the markets for municipal auction rate securities and variable rate demand obligations (''VRDOs'') and the comments of numerous primary purchasers of demand securities also suggest that a full exemption for demand securities is no longer appropriate and that the exemption should be modified to provide that paragraphs (b)(5) and (c) of the Rule relating to the disclosure of continuing disclosure documents and recommendations by broker-dealers also would apply to the offerings of demand securities.[299]

B. Objectives

The purpose of the proposal is to achieve more efficient, effective, and wider availability of municipal securities information to broker-dealers, mutual funds, analysts and other market professionals, institutional and retail investors, and the public generally, and to help prevent fraudulent, deceptive, or manipulative acts or practices in the municipal securities market.

C. Legal Basis

Pursuant to the Exchange Act, and particularly Sections 2, 3(b), 10, 15(c), 15B, 17 and 23(a)(1) thereof, 15 U.S.C. 78b, 78c(b), 78j, 78*o*(c), 78*o*–4, 78q and 78w(a)(1), the Commission is proposing amendments to § 240.15c2–12 of Title 17 of the *Code of Federal Regulations.*

D. Small Entities Subject to the Rule

The proposal would apply to any broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more and issuers of such securities.

The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small government jurisdiction.''[300] The Commission's rules define ''small business'' and ''small organization'' for purposes of the RFA for each of the types of entities regulated by the Commission.

A broker-dealer is a small business if its total capital (net worth plus subordinated liabilities) on the last day of its most recent fiscal year was $500,000 or less, and is not affiliated with any entity that is not a ''small business.''[301]

A municipal securities dealer that is a bank (including a separately identifiable department or division of a bank) is a small business if it has total assets of less than $10 million at all times during the preceding fiscal year; had an average monthly volume of municipal securities transactions in the preceding fiscal year of less than $100,000; and is not affiliated with any entity that is not a ''small business.''[302]

For purposes of Commission rulemaking, an issuer or person, other than an investment company, is a ''small business'' or ''small organization'' if its ''total assets on the last day of its most recent fiscal year were $5 million or less.''[303]

Based on information obtained by the Commission's staff in connection with the 2008 Adopted Amendments, the Commission estimates that 250 broker-dealers, including municipal securities dealers, would be Participating Underwriters within the meaning of Rule 15c2–12. Based on a recent review of industry sources, the Commission does not believe that any Participating Underwriters would be small broker-dealers or municipal securities dealers.

A ''small governmental jurisdiction'' is defined by the RFA to include ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[304] Currently, there are more than 50,000 state and local issuers of municipal securities[305] that would be subject to the proposal. The Commission estimates that approximately 40,000 state and local issuers would be ''small'' entities for purposes of the RFA. However, the Commission believes that most issuers of municipal securities would qualify for the limited exemption in paragraph (d)(2) of the Rule.[306] The Commission has estimated that currently 10,000 issuers have entered into continuing disclosure agreements that provide for their submitting continuing disclosure documents to the MSRB and that, under the proposed amendment to narrow the Rule's exemption for demand securities, the number of affected issuers would increase to 12,000 issuers. It is possible that some of these issuers may be small issuers.

The proposed amendments would apply to all small entities that are currently subject to Rule 15c2–12. Because small entities already may submit event notices for the current disclosure items, these entities are able to prepare event notices that are proposed to be incorporated into the Rule. The Commission expects that providing the additional event disclosure items would increase costs incurred by small entities, to the extent that their primary offerings of municipal securities are covered by the Rule, because they potentially would have to provide a greater number of event notices than they do currently. However, the Commission notes this increased cost would be approximately $8 per entity annually. The Commission's staff has estimated that for purposes of the Paperwork Reduction Act each issuer, including small entities, would be subject to an annual reporting burden of approximately 4.5 hours and an estimated annual cost ranging from $600 to $760.[307] In addition, some issuers could have one-time costs ranging from $50 to $4,300.[308]

E. Reporting, Recordkeeping and Other Compliance Requirements

Rule 15c2–12 currently sets forth eleven disclosure items that the

[296] *See supra* Section II.E.3.

[297] *See supra* Section II.E.4.

[298] *See supra* Section II.A.

[299] *Id.*

[300] 5 U.S.C. 601(6).

[301] 17 CFR 240.0–10(c).

[302] 17 CFR 240.0–10(f).

[303] 17 CFR 230.157. *See also* 17 CFR 240.0–10(a).

[304] 5 U.S.C. 601(5).

[305] *See* Securities Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994).

[306] Specifically, Rule 15c2–12(d)(2) provides an exemption from the application of paragraph (b)(5) (Rule's provisions regarding continuing disclosure agreements) of the Rule with respect to primary offerings if, among other things, the issuer or obligated person has agreed to a limited disclosure obligation, including sending certain material event notices to the MSRB. *See* 17 CFR 240.15c2–12(d)(2).

[307] *See supra* Section V.E.2.

[308] *Id.*

Participating Underwriter must reasonably determine would be provided, in accordance with the continuing disclosure agreement, to the MSRB. The proposed amendments to Rule 15c2–12 would amend an existing event disclosure item and add four new event disclosure items. The proposed amendments would clarify the current disclosure item regarding adverse tax opinions, add tender offers to the current disclosure item regarding bond calls contained in paragraph (b)(5)(C)(8), and add three new disclosure items: bankruptcy, insolvency, receivership or similar event of the issuer or obligated person; merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and the appointment of a successor or additional trustee or the change of name of a trustee, if material. In addition, the proposal would modify the condition that event notices be submitted to the MSRB, ''if material,'' for some, but not all, of the Rule's specified events. The proposal also would delete the current exemption for demand securities in paragraph (d)(1)(iii) and add language in new paragraph (d)(5) so that paragraphs (b)(5) [309] and (c) [310] of the Rule also would apply to a primary offering of demand securities. Lastly, the proposed amendments would modify paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit event notices to the MSRB, ''in a timely manner not in excess of ten business days after the occurrence of the event,'' instead of ''in a timely manner'' as the Rule currently provides.

[309] Rule 15c2–12(b)(5) requires a Participating Underwriter, before purchasing or selling municipal securities in connection with an offering of municipal securities, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of the holders of the municipal securities, to provide annual filings, material event notices, and failure to file notices (*i.e.,* continuing disclosure documents) to the MSRB. *See* 17 CFR 240.15c2–12(b)(5).

[310] Rule 15c2–12(c) requires a broker, dealer, or municipal securities dealer that recommends the purchase or sale of a municipal security to have procedures in place that provide reasonable assurance that it will receive prompt notice of any material event and any failure to file annual financial information regarding the municipal security. *See* 17 CFR 240.15c2–12(c).

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed amendments to Rule 15c2–12.

G. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed revisions to the Rule, the Commission considered the following alternatives:

(1) Establishing differing compliance or reporting requirements or timetables which take into account the resources available to smaller entities;

(2) Exempting smaller entities from coverage of the disclosure requirements, or any part thereof;

(3) The clarification, consolidation, or simplification of disclosure for small entities; and

(4) Use of performance standards rather than design standards.

The Commission believes that separate compliance or reporting requirements or timetables for smaller entities that would differ from the proposed requirements, or exempting broker-dealers from the obligations in paragraph (b)(5) and (c) of the Rule with respect to small issuers, would not achieve the Commission's objectives. At the outset, the Commission notes that most small issuers of municipal securities are eligible for the limited exemption currently contained in paragraph (d)(2) of the Rule. The exemption in Rule 15c2–12(d)(2) provides that paragraph (b)(5) of the Rule, which relates to the submission of continuing disclosure agreements, does not apply to a primary offering if the conditions contained therein are met.[311] This limited exemption from the Rule is intended to assist small governmental jurisdictions that issue municipal securities. In the case of primary offerings by small governmental jurisdictions that are not covered by the exemption, the Commission notes that the proposal balances the informational needs of investors and others with regard to municipal securities issued by small governmental jurisdictions with the effects of the proposed rule change. The adoption of separate rules for broker-dealers with respect to continuing disclosure agreements entered into by smaller entities would not be consistent with the Commission's intent to improve the greater availability and timeliness of disclosures in the municipal securities market. Furthermore, the municipal securities market could be disadvantaged by disparate disclosures by small and large entities pursuant to their continuing disclosure agreements. Broker-dealers and other market participants would be better able to satisfy their legal obligations under the federal securities laws to have a reasonable basis on which to recommend municipal securities. In addition, the proposal would impose performance standards rather than design standards.

[311] Specifically, Rule 15c2–12(d)(2) provides an exemption from the application of paragraph (b)(5) (Rule's provisions regarding continuing disclosure agreements) of the Rule with respect to primary offerings if, among other things, the issuer or obligated person has agreed to a limited disclosure obligation, including sending certain material event notices to the MSRB. *See* 17 CFR 240.15c2–12(d)(2).

H. Request for Comments

The Commission encourages written comments on matters discussed in the IRFA. In particular, the Commission requests comments on: (a) The number of small entities that would be affected by the proposed amendments; (b) the nature of any impact the proposed amendments would have on small entities and empirical data supporting the extent of the impact; (c) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the proposed amendments; and (d) potential costs to small entities, if any, including costs associated with providing event notices. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule is adopted, and will be placed in the same public file as comments on the proposed rule itself. Persons wishing to submit written comments should refer to the instructions for submitting comments in the front of this release.

X. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 2, 3(b), 10, 15(c), 15B, 17 and 23(a)(1) thereof, 15 U.S.C. 78b, 78c(b), 78j, 78*o*(c), 78*o*–4, 78q and 78w(a)(1), the Commission is proposing amendments to § 240.15c2–12 of Title 17 of the *Code of Federal Regulations* in the manner set forth below.

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78*o,* 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.15c2–12 is amended by the following:

A. Revise the introductory text of paragraph (b)(5)(i)(C), and paragraphs (b)(5)(i)(C)(*2*), (*6*), (*7*), (*8*), (*10*), and (*11*);

B. Add new paragraphs (b)(5)(i)(C)(*12*), (*13*), and (*14*);

C. Revise paragraph (d)(1)(ii);

D. Remove paragraph (d)(1)(iii); and

E. Revise the paragraph (d)(2)(ii)(B); and

F. Add new paragraph (d)(5).

The additions and revisions read as follows.

§ 240.15c2–12 Municipal securities disclosure.

* * * * *

(b) * * *

(5)(i) * * *

(C) In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the Offering:

* * * * *

(*2*) Non-payment related defaults, if material;

* * * * *

(*6*) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of the securities, or other events affecting the tax-exempt status of the security;

(*7*) Modifications to rights of security holders, if material;

(*8*) Bond calls, if material, and tender offers;

* * * * *

(*10*) Release, substitution, or sale of property securing repayment of the securities, if material;

(*11*) Rating changes;

(*12*) Bankruptcy, insolvency, receivership or similar event of the obligated person;

Note to paragraph (b)(5)(i)(C)*(12)*: For the purposes of the event identified in paragraph (b)(5)(i)(C)(12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan or reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person;

(*13*) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(*14*) Appointment of a successor or additional trustee or the change of name of a trustee, if material; and

* * * * *

(d) * * *

(1) * * *

(ii) Have a maturity of nine months or less.

* * * * *

(2) * * *

(ii) * * *

* * * * *

(B) In a timely manner not in excess of ten business days after the occurrence of the event, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering; and

* * * * *

(5) With the exception of paragraphs (b)(5) and (c) of this section, this section shall not apply to a primary offering of municipal securities in authorized denominations of $100,000 or more if such securities may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

* * * * *

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

* * * * *

3. Part 241 is amended by adding Release No. 34–XXXXX and the release date of X to the list of interpretative releases.

Dated: July 17, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–17466 Filed 7–23–09; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
July 24, 2009

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2008–0124; 91200–1231–9BPP–L2]

RIN 1018–AW31

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2009–10 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This proposed rule also provides the final regulatory alternatives for the 2009–10 duck hunting seasons.

DATES: You must submit comments on the proposed early-season frameworks by August 3, 2009. The Service Migratory Bird Regulations Committee (SRC) will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2010 spring/summer migratory bird subsistence seasons in Alaska on July 29 and 30, 2009. All meetings will commence at approximately 8:30 a.m. Following later **Federal Register** documents, you will be given an opportunity to submit comments for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2009.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2008–0124; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

The SRC will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2009

On April 10, 2009, we published in the **Federal Register** (74 FR 16339) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2009–10 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 10 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. As an aid to the reader, we reiterate those headings here:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Mottled ducks
   viii. Wood ducks
   ix. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On May 27, 2009, we published in the **Federal Register** (74 FR 25209) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The May 27 supplement also provided detailed information on the 2009–10 regulatory schedule and announced the SRC and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the regulatory alternatives for the 2009–10 duck hunting seasons. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2009–10 season.

We have considered all pertinent comments received through June 30, 2009, on the April 10 and May 27, 2009, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 17, 2009.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 24–25, 2009, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2009–10 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl.

Participants at the previously announced July 29–30, 2009, meetings will review information on the current

status of waterfowl and develop recommendations for the 2009–10 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit comments to the Director on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions were characterized as near normal for most of the traditional survey area during the 2009 Waterfowl Breeding Population and Habitat Survey, with greatly improved wetlands conditions in portions of the prairies. Adequate moisture and good habitat conditions characterized much of the eastern survey area. The northernmost survey areas in both the traditional and eastern survey areas experienced an extremely late spring.

Traditional Survey Area (U.S. and Canadian Prairies and Parklands)

Major improvements in wetlands conditions occurred across much of the traditional survey area in 2009. The prairie pothole region of southern Manitoba, most of the Dakotas and eastern Montana benefitted primarily from above average fall and winter precipitation. These areas were classified as good to excellent, with mostly fair habitat conditions confined to west-central Montana and southeastern South Dakota. Above average precipitation improved wetlands conditions in the southern grasslands of Saskatchewan but the habitats along the Alberta and Saskatchewan border are suffering under drought conditions.

The parklands continued to receive below normal precipitation in 2009. Fortunately, habitat conditions remain classified as fair to good because of the holdover water that resulted during the extremely wet year in 2008.

Bush (Alaska, Northern Manitoba, Northern Saskatchewan, Northwest Territories, Yukon Territory, Western Ontario)

In the boreal forest, spring breakup was extremely late over most of the survey area in 2009. Most large lakes remained frozen into early June. Many smaller wetland habitats, such as beaver ponds, were open during the survey and those in northern Alberta and into the Northwest Territories were rated as good. Habitat conditions were drier across northern Saskatchewan and Manitoba but improved nearer to Hudson Bay. The majority of Alaska was rated as good.

Eastern Survey Area

From Maine through most of the Maritimes, an above average snowfall was experienced and average spring temperatures were recorded, resulting in fully charged wetlands with little flooding, which is in contrast to flooding in 2008. Despite below average snowfall and winter temperatures for Newfoundland and Labrador, habitat conditions are rated as fair to excellent, with poorer conditions found at higher elevation habitat. Through New York and much of Quebec and Ontario, generally good to excellent waterfowl habitat exists, but a series of major storms during mid-May in southwest Ontario could hamper production because of flooding. The Nickel and Clay Belts of east-central Ontario and points farther west were supporting good habitat at the time of the survey following average winter and spring precipitation. Good habitat conditions remained moving farther north but deteriorated approaching the James and Hudson Bay lowlands due to deep snows and a very late spring. Lowland habitats on the Quebec side were much drier than normal.

Status of Teal

The estimate of blue-winged teal from the traditional survey area is 7.4 million. This represents an 11.0 percent increase from 2008 and is 60 percent above the 1955–2008 average.

Sandhill Cranes

Compared to increases recorded in the 1970s, annual indices to abundance of the Mid-continent Population (MCP) of sandhill cranes have been relatively stable since the early 1980s. The spring index for 2009 in the Central Platte River Valley, Nebraska, uncorrected for visibility bias, was 460,000 sandhill cranes. The photo-corrected, 3-year average for 2006–08 was 382,271, which is within the established population-objective range of 349,000–472,000 cranes.

All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2008–09. An estimated 10,293 hunters participated in these seasons, which was similar to the number that participated in the previous season. Hunters harvested a record-high 22,989 MCP cranes in the U.S. portion of the Central Flyway during the 2008–09 seasons, which was 24 percent higher than the estimated harvest for the previous year. The retrieved harvest of MCP cranes in hunt areas outside of the Central Flyway (Arizona, Pacific Flyway portion of New Mexico, Alaska, Canada, and Mexico combined) was 15,024 during 2008–09. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 42,536 birds, which was a record high and is 7 percent higher than the previous year's estimate. The long-term (1982–2004) trend for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2008 pre-migration survey for the Rocky Mountain Population (RMP) resulted in a count of 21,156 cranes. The 3-year average for 2005, 2007, and 2008 (no survey was conducted in 2006) was 21,614 sandhill cranes, which is above the established population objective of 17,000–21,000 for the RMP. Hunting seasons during 2008–09 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming resulted in a record-high harvest of 936 RMP cranes, a 14 percent increase from the harvest of 820 in 2007–08. The Lower Colorado River Valley Population (LCRVP) survey results indicate an increase from 1,900 birds in 1998 to 2,401 birds in 2009. The 3-year average of 2,981 LCRVP cranes is based on counts from 2006, 2007 and 2009 (survey was not complete in 2008)

and is above the population objective of 2,500.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2009 indicate that the number of displaying woodcock in the Eastern and Central Management Regions were unchanged from 2008. There was no significant 10-year trend in woodcock heard in both management regions during 1999–2009. This represents the sixth consecutive year that the 10-year trend estimate for the Eastern Region did not indicate a significant decline. The 10-year trend in the Central Region returned to stability after showing a significant decline last year. There were long-term (1968–2009) declines of 1.1 percent per year in both management regions.

Wing-collection Survey data indicate that the 2008 recruitment index for the U.S. portion of the Eastern Region (1.8 immatures per adult female) was 11 percent higher than the 2007 index, and 8 percent higher than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.6 immatures per adult female) for last year's reproduction season was 6 percent higher than the 2007 index and 1 percent below the long-term average.

Band-Tailed Pigeons and Doves

Information on the abundance and harvest of band-tailed pigeons is collected annually in the western United States and British Columbia. Annual counts of Interior band-tailed pigeons seen and heard per route have not changed significantly since implementation of the Breeding Bird Survey (BBS) in 1966; however, they decreased significantly over the last 10 years. The 2008 harvest was estimated to be 4,700 birds. For Pacific Coast band-tailed pigeons, annual BBS counts of birds seen and heard per route have not changed significantly since 1966, but they have increased significantly over the last 10 years. According to the Pacific Coast Mineral Site Survey, annual counts of Pacific Coast band-tailed pigeons seen at each mineral site have increased significantly since the survey was experimentally implemented in 2001, but counts over the last 5 years appear stable. The 2008 estimate of harvest was 30,200 birds.

The status report summarizes information on the abundance and harvest of mourning doves collected annually in the United States. The focus is on results from the Mourning Dove Call-count Survey, but also includes results from the Breeding Bird Survey and Migratory Bird Harvest Information Program. According to the Call-count survey, over the most recent 10 years (2000–09), there was no significant trend in doves heard for either the Eastern or Western Management Units while the Central Unit declined significantly. Over the 44-year period (1966–2009), there was no significant change in doves heard for the Eastern Unit while the Central and Western Units declined significantly. Based on the mean number of doves seen per route, however, there was no significant change for any of the three management units during the recent 10-year period. Over 44 years, there was no change in doves seen for the Eastern and Central Units while the Western Unit declined significantly. The preliminary 2008 harvest estimate for the United States was 17,402,400 doves. A banding program is underway to obtain current information in order to develop mourning dove population models for each management unit to provide guidance for improving our decision-making process with respect to harvest management.

The two key States with a white-winged dove population are Arizona and Texas. California and New Mexico have much smaller populations.

The Arizona Game and Fish Department (AGFD) has monitored white-winged dove populations by means of a call-count survey to provide an annual index to population size. It runs concurrently with the U.S. Fish and Wildlife Service's Mourning Dove Call-count Survey. The index peaked at 52.3 mean number of white-winged doves heard per route in 1968 but fell precipitously in the late 1970s. The index has stabilized to around 25 doves per route in the last few years; in 2009, the mean number of doves heard per route was 27.9. AGFD also monitors harvest. Harvest during the 15-day season (September 1–15) peaked in the late 1960s at approximately 740,000 birds (1968 AGFD estimate) and has since stabilized at around 100,000 birds; the preliminary 2008 Migratory Bird Harvest Information Program (HIP) estimate of harvest was 95,300 birds. In 2007, AGFD redesigned their dove harvest survey to sample only from hunters registered under HIP so that results from the AGFD survey would be comparable to those from HIP. The preliminary 2008 Arizona harvest estimate was 79,488 birds.

In Texas, white-winged doves continue to expand their breeding range. Nesting by whitewings has been recorded in most counties, except for the northeastern part of the State. Nesting is essentially confined to urban areas, but appears to be expanding to exurban areas. Concomitant with this range expansion has been a continuing increase in white-wing abundance. A new DISTANCE sampling protocol was implemented for central and south Texas for 2007, and expanded in 2008 so that coverage is almost Statewide. Once fully implemented, biologists should have the ability to obtain a good estimate of white-winged dove abundance in Texas. While 2008 and 2009 data are not available at this time, 2007 surveys indicated an estimated abundance throughout surveyed areas (representing about 20 percent of the State) of about 2,300,000 white-wings. Total Statewide harvest has averaged about 2 million birds annually.

The Texas Parks and Wildlife Department is working to improve management of white-winged doves in Texas in the following ways: (1) Expanding current surveys of spring populations to encompass areas throughout the State that now have breeding populations; (2) completing the Tamaulipas-Texas White-winged Dove Strategic Plan so that there are consistent and comparable harvest management strategies, surveys, research, and data collection across the breeding range of the species; (3) expanding operational banding in 2009 that was begun in 2007 to derive estimates of survival and harvest rates; (4) implementing a wing-collection survey for recruitment rates in lieu of the feeding flight and production surveys; (5) estimating probability of detection for more accurate estimates of breeding populations within urban environments; and (6) evaluating and estimating reproductive success in urban areas to better estimate population increases.

In California, BBS data (although imprecise due to a small sample size) indicate that there has been a significant increase in the population between 1968 and 2008. According to HIP surveys, the preliminary harvest estimate for 2008 was 83,300 birds. In New Mexico, BBS data (very imprecise due to a small sample size) also showed a significant increase over the long term. In 2008, the estimated harvest was 49,100 birds.

White-tipped doves are believed to be maintaining a relatively stable population in the Lower Rio Grande Valley (LRGV) of Texas. DISTANCE sampling procedures in the LRGV include whitetips. However, until the sampling frame includes rural Rio Grande corridor habitats, not many

whitetips will be reported. Sampling frame issues are expected to be resolved by next year. However, annual white-tipped dove harvest during the special season is only averaging 3,000–4,000 birds.

Review of Public Comments

The preliminary proposed rulemaking (April 10 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2009–10 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the April 10 **Federal Register** document. Only the numbered items pertaining to early-season issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 10 **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

Service Response: As we stated in the April 10 **Federal Register**, we intend to continue use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2009–10 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for certain species, such as canvasbacks, scaup, and pintails).

As we stated last year regarding incorporation of a one-step constraint into the AHM process (73 FR 50678), this proposal was addressed by the AHM Task Force of the Association of Fish and Wildlife Agencies (AFWA) in its report and recommendations. This recommendation will be included in considerations of potential changes to the set of regulatory alternatives at a yet to be determined later date. Currently, there is no consensus on behalf of the Flyway Councils on how to modify the regulatory alternatives. We believe that the new Supplemental Environmental Impact Statement for the migratory bird hunting program (*see* NEPA Consideration section), currently in preparation, may be an appropriate venue for considering such changes in a more comprehensive manner that involves input from all Flyways.

We will propose a specific regulatory alternative for each of the Flyways during the 2009–10 season after survey information becomes available later this summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm*.

B. Regulatory Alternatives

Council Recommendations: The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2008.

Service Response: The regulatory alternatives proposed in the April 10 **Federal Register** will be used for the 2009–10 hunting season (*see* accompanying table at the end of this proposed rule for specifics). In 2005, the AHM regulatory alternatives were modified to consist only of the maximum season lengths, framework dates, and bag limits for total ducks and mallards. Restrictions for certain species within these frameworks that are not covered by existing harvest strategies will be addressed during the late-season regulations process. For those species with harvest strategies (canvasbacks, pintails, black ducks, and scaup), those strategies will be used for the 2009–10 hunting season.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the number of hunting days during the special September teal season in the Atlantic Flyway be increased from 9 consecutive days to 16 consecutive days whenever the blue-winged teal breeding population exceeds 4.7 million birds.

Service Response: We concur with the Atlantic Flyway Council's recommendation to increase the number of hunting days during the special September teal season from 9 consecutive hunting days to 16 consecutive hunting days in the Atlantic Flyway whenever the blue-winged teal breeding population estimate for the traditional survey area exceeds 4.7 million birds. While the Mississippi and Central Flyways have had operational 16-day September teal seasons (whenever the blue-winged teal breeding population estimate for the traditional survey area exceeds 4.7 million birds) since 1998, the Atlantic Flyway's existing 9-day September teal seasons were first implemented in 1998 and made operational in 2003. We estimate that the additional 7 hunting days will result in an increased harvest of about 7,700 blue-winged teal, or about a 10 percent increase in the Atlantic Flyway's overall blue-winged teal harvest of about 75,000 (average of 75,290 since 1998). In 2007, blue-winged teal harvest in the Mississippi and Central Flyways was about 532,000 in the special September season, and over 973,000 overall.

In providing the Atlantic Flyway this expanded opportunity for teal, we offer several notes to the Atlantic, Central, and Mississippi Flyway Councils regarding teal. First, the Atlantic Flyway Council should prepare a report that evaluates pertinent teal population and harvest information after the 16-day season has been conducted for 3 years. Second, we note that an assessment of the cumulative effects of all teal harvest, including harvest during special September seasons, has never been conducted. Therefore, we will not agree to any further modifications of special September teal seasons or other special September duck seasons until a thorough assessment of the harvest potential has been completed for both blue-winged and green-winged teal, as

well as an assessment of the impacts of current special September seasons on these two species. We request that the Atlantic, Mississippi, and Central Flyway Councils designate representatives who will assist Service staff with the technical aspects of these assessments. Our goal is to complete this important assessment work within 3 years.

Finally, utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 7.4 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2009.

vi. Scaup

Council Recommendations: The Mississippi Flyway Council recommended that the ''restrictive'' regulatory alternative for scaup in the Mississippi Flyway be a 45-day season with a 2-bird daily bag limit and a 15-day season with 1-bird daily bag limit.

The Central Flyway Council recommended modifying the ''restrictive'' regulatory alternative for scaup in the Central Flyway to an option of a 74-day season with a 1-bird daily bag limit, or a 39-day season with a 3-bird daily bag limit, or a 39-day season with a 2-bird daily bag limit and a 35-day season with 1-bird daily bag limit. The Council further recommended that the ''moderate'' and the ''liberal'' alternatives remain unchanged from last year. Subsequent to this March 2009 recommendation, the Council amended the recommendation at the June SRC meeting to a ''restrictive'' regulatory alternative for scaup in the Central Flyway of a 39-day season with a 2-bird daily bag limit and a 35-day season with 1-bird daily bag limit.

Service Response: We support the Mississippi Flyway Council's recommendation to modify their ''restrictive'' regulatory alternative for scaup to a season consisting of 45 days with a 2-bird daily bag limit and 15 days with a 1-bird daily bag limit. The projected harvest from this regulatory alternative falls within the guidelines we provided the Flyway Councils in April (74 FR 16339).

We do not support the Central Flyway Council's original recommendation that includes an option for the ''restrictive'' regulatory alternative. While we understand that, on their own, each option would likely conform to the established harvest guidelines, providing for options among States would result in different regulations within the Flyway, which would preclude proper evaluation.

The use of State ''options'' (*i.e.*, two or more combinations of daily bag limit and season length from which each State could periodically select) in harvest management is problematic. Such differential regulations within a Flyway (or within designated management units, such as the High Plains Mallard Management Unit in the Central Flyway), confound our ability to adequately assess the impacts of regulations on duck harvest, and hence the ability to appropriately adjust regulations in response to changes in population status. The potential of these differential regulations changing annually adds further complications to any evaluations of potential impacts or development of appropriate regulatory responses. Therefore, we will not approve the use of options in developing harvest management approaches for scaup or other ducks.

We do, however, support the Council's amended recommendation of a ''restrictive'' regulatory alternative for scaup in the Central Flyway, consisting of a 39-day season with a 2-bird daily bag limit and a 35-day season with a 1-bird daily bag limit. Like the Mississippi Flyway Council's recommended regulatory alternative, the projected harvest from this regulatory alternative falls within the guidelines we provided the Flyway Councils in April (74 FR 16339).

Hybrid seasons (seasons with differential daily bag limits) may be applied to each duck zone within a State; however, the portion of the season in which the daily bag limit for scaup is higher must be placed in a continuous segment (*i.e.*, segments of lower daily bag limits cannot be inserted between segments with higher daily bag limits). If the number of days with the higher daily bag limit is interrupted by a season split, the remaining days for that segment must be utilized at the beginning of the next split. Construction of ''restrictive,'' ''moderate,'' and ''liberal'' scaup packages have been made under the assumption of a liberal AHM framework as determined by the status of mallards. To date, we have not addressed how changes in the AHM frameworks would affect the scaup decision-making framework. The suite of scaup regulatory packages shall remain in place for the next 3 years in all four Flyways and will be evaluated at the end of that period.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2009.

Service Response: We concur. As we stated last year (73 FR 50678), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually.

9. Sandhill Cranes

Council Recommendations: The Mississippi, Central, and Pacific Flyway Councils recommended expanding the area open to Mid-continent Population (MCP) sandhill crane hunting in Wyoming to include Johnson and Sheridan Counties.

The Central and Pacific Flyway Councils recommended using the 2009 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,939 birds as proposed in the allocation formula using the 3-year running average.

The Pacific Flyway Council recommended extending the experimental, limited hunt for Lower Colorado River sandhill cranes in Arizona for an additional 3 years. The extension is necessary due to difficulties initiating the new hunt, which was approved by the Service in 2007.

Service Response: We agree with the Councils' recommendations on the RMP sandhill crane harvest allocation of 1,939 birds for the 2009–10 season as outlined in the RMP sandhill crane management plan's harvest allocation formula. Regarding the modification of the MCP sandhill crane hunt area in Wyoming to include portions of Johnson and Sheridan Counties, we agree. Both of these areas are within existing MCP hunt plans.

In 2007, the Pacific Flyway Council recommended, and we approved, the establishment of a limited hunt for the Lower Colorado River Valley Population (LCRVP) of sandhill cranes in Arizona (72 FR 49622). However, the population inventory on which the LCRVP hunt plan is based was not completed that year. Thus, the Arizona Game and Fish Department chose to not conduct the hunt in 2007 and sought approval from the Service again last year to begin conducting the hunt. We again

approved the limited hunt (73 FR 50678). However, due to complications encountered with the proposed onset of this new season falling within ongoing efforts to open new hunting seasons on Federal wildlife refuges, the experimental limited hunt season was not opened last year. As such, the State of Arizona has requested that the next 3 years (2009–12) be designated as the new experimental season and has designated an area under State control where the experimental hunt will be conducted. Given that the LCRVP survey results indicate an increase from 1,900 birds in 1998 to 2,401 birds in 2009, and that the 3-year average of 2,981 LCRVP cranes is above the population objective of 2,500, we continue to support the establishment of the 3-year experimental framework for this hunt, conditional on successful monitoring being conducted as called for in the Flyway hunt plan for this population.

Our final environmental assessment (FEA) on this new hunt can be obtained by writing Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 NE. 11th Avenue, Portland, OR 97232–4181, or it may be viewed via the Service's home page at *http://www.regulations.gov* or at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BirdManagement.html.*

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''moderate'' season framework for States within the Eastern Management Unit population of mourning doves, resulting in a 70-day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or ''moderate'') season package of a 15-bird daily bag limit and a 70-day season for the 2009–10 mourning dove season in the States within the Central Management Unit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination. The Councils also recommended changing the opening date for dove hunting in the South Zone in Texas to the Friday nearest September 20, but not earlier than September 17.

The Pacific Flyway Council recommended use of the ''moderate'' season framework for States in the Western Management Unit (WMU) population of mourning doves, which represents no change from last year's frameworks.

Service Response: Last year, we accepted and endorsed the interim harvest strategies for the Central, Eastern, and Western Management Units (73 FR 50678). As we stated then, the interim mourning dove harvest strategies are a step towards implementing the Mourning Dove National Strategic Harvest Plan (Plan) that was approved by all four Flyway Councils in 2003. The Plan represents a new, more informed means of decision-making for dove harvest management besides relying solely on traditional roadside counts of mourning doves as indicators of population trend. However, recognizing that a more comprehensive, national approach would take time to develop, we requested the development of interim harvest strategies, by management unit, until the elements of the Plan can be fully implemented. In 2004, each management unit submitted its respective strategy, but the strategies used different datasets and different approaches or methods. After initial submittal and review in 2006, we requested that the strategies be revised, using similar, existing datasets among the management units along with similar decision-making criteria. In January 2008, we recommended that, following approval by the respective Flyway Councils in March, they be submitted in 2008 for endorsement by the Service, with implementation for the 2009–10 hunting season.

Thus, based on the new interim harvest strategies and current population status, we agree with the recommended selection of the ''moderate'' season frameworks for doves in the Eastern, Central, and Western Management Units.

Regarding the recommended change in the opening date for dove hunting in the South Zone in Texas, we agree. Allowing Texas to use a ''floating'' framework opening date for the South Zone is a relatively minor change that would allow Texas additional flexibility in establishing its season.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Mississippi and Central Flyway Councils recommend modifying the boundary for the Special White-winged Dove Area (SWWDA) in Texas by removing portions of Jim Hogg and northern Starr Counties, and modifying the daily bag limit in the SWWDA in Texas to 15 doves per day in the aggregate to be consistent with mourning dove frameworks.

Service Response: We agree with the Councils' recommendation to remove portions of the SWWDA area in Texas. Removal of the areas with poorer quality white-winged dove habitat from the SWWDA hunt area will allow Texas to more appropriately manage the overall dove harvest. We also agree with the Councils' recommendation to modify the daily bag limit in the SWWDA from 12 to 15 birds per day. Increasing the overall aggregate daily bag limit on doves, while maintaining the internal bag limit restrictions on mourning and white-tipped doves, will provide hunters more consistent and easily understood dove hunting regulations.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended reducing the daily bag limits for brant in Alaska from 3 per day with 6 in possession to 2 per day with 4 in possession. The Council also subsequently recommended at the June SRC meeting several goose season modifications to address new survey information regarding estimates of dusky Canada geese. They recommended delaying the opening of goose hunting in the affected areas by one week, implementing an education and outreach program to notify hunters of the need for further harvest restrictions, initiation of a voluntary check station for dusky Canada geese in those areas, and implementation of actions identified in the Pacific Flyway Management Plan for dusky Canada geese in 2010.

Service Response: The dusky Canada goose survey this year estimated a record low number of dusky Canada geese nesting on the Copper River Delta in Alaska. These results increase our longstanding concern for this subspecies of Canada goose. Further, we appreciate the fact that the Pacific Flyway had planned for this possible situation when the Flyway management plan for this population was revised in 2008, and we strongly support the development and use of these cooperatively-developed management plans. Therefore, we propose to enact the harvest management program called for in the Flyway management plan at this population level. More specifically:

1. A mandatory State-issued permit is required to hunt Canada geese in Alaska GMU 6–C, and on Middleton, Hinchinbrook and Hawkins Islands in the Gulf of Alaska adjacent to GMU 6–C;

2. All geese harvested from these areas must be taken to a State-operated

check station where the subspecies will be determined;

3. The season for all Canada geese will be closed if a total of 40 dusky Canada geese are harvested; and

4. The State of Alaska will conduct an effort to educate the hunting public about the conservation concerns surrounding the dusky Canada goose in the area of Cordova, Alaska.

We recognize the fact that implementation of the permit hunt in a relatively short time will prove challenging, but we strongly believe that the actions outlined in the management plan constitute the best course of action for harvest management of the dusky Canada goose.

We recognize the work involved crafting the amended recommendation from the Pacific Flyway Council on behalf of the State of Alaska. However, this recommendation consists of harvest management actions not addressed in the Flyway management plan and their impact on dusky Canada goose harvest is unknown. Further, the Council's amended proposal does not establish a limit on the number of dusky Canada geese that could be taken, nor would they provide any information regarding the harvest of dusky Canada geese in the Copper River Delta area.

We concur with the Pacific Flyway Council's recommendation to decrease the daily bag and possession limit for brant.

20. Puerto Rico

Council Recommendations: The Atlantic Flyway Council recommended that Puerto Rico be permitted to adopt a 20-bird bag limit for doves in the aggregate for the next three hunting seasons, 2009–2011. Legally hunted dove species in Puerto Rico are the Zenaida dove, the white-winged dove, and the mourning dove. They also recommended that the 20-bird aggregate bag limit should include no more than 10 Zenaida doves and no more than 3 mourning doves.

Service Response: As we stated last year when we approved Puerto Rico's proposal (73 FR 50678), we concur with the intent of the 3-year experimental season to increase harvest pressure on a rapidly growing population of white-winged doves while decreasing hunting pressure on Zenaida and mourning doves.

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment B including your personal identifying information B may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our record of decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at *http://www.fws.gov/migratorybirds/*.

Endangered Species Act Consideration

Prior to issuance of the 2009–10 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter, the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. A regulatory cost-benefit analysis has been prepared and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees,

loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008.

Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations.

Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010).

A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian Tribes and have determined that there are no effects on Indian trust resources. However, in the April 10 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009–10 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate

in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2009–10 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: July 16, 2009.

Jane Lyder,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2009–10 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2009 and March 10, 2010.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (Taking by Falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—Includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—Includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours

Atlantic Flyway—One-half hour before sunrise to sunset, except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise, to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 19). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be

held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise, to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-Tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Experimental Seasons

Canada goose seasons of up to 10 days during September 16–25 may be selected in Delaware. The daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Experimental Seasons

Canada goose seasons of up to 7 days during September 16–22 may be selected in the Northwest Goose Zone in Minnesota. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW Goose Management Zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2 and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal or State sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

1. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

3. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Special Seasons in the Pacific Flyway

Arizona may select a season for hunting sandhill cranes within the range of the Lower Colorado River Population (LCR) of sandhill cranes, subject to the following conditions:

Outside Dates: Between January 1 and January 31.

Hunting Seasons: The season may not exceed 3 days.

Bag limits: Not to exceed 1 daily and 1 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: The season is experimental. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Pacific Flyway Council.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 31) in the Atlantic, Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 31) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the 2 species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 19) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons

States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (*see* white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 18), but not earlier than September 17, and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (*see* white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits

Idaho, Oregon, and Washington—Not more than 30 consecutive days, with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days, with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days, with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit

The daily bag limit may not exceed 15 mourning and white-winged doves in the aggregate.

Central Management Unit

In Texas, the daily bag limit may not exceed 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 15 mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

2. On Middleton Island in Unit 6, a special, permit-only Canada goose

season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

3. In Units 6–B, 6–C and on Hinchinbrook and Hawkins Islands in Unit 6–D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose (as defined above) harvest reaches 40.

4. In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A–C), 10 (Unimak Island portion), and 17.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swans per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and

hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Oklahoma

North Zone—That portion of the State north of a line extending east from the Texas border along U.S. Highway 62 to Interstate 44, east along Oklahoma State Highway 7 to U.S. Highway 81, then south along U.S. Highway 81 to the Texas border at the Red River.

Southwest Zone—The remainder of Oklahoma.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to FM 649 in Randado; south on FM 649 to FM 2686; east on FM 2686 to FM 1017; southeast on FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of

Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of U.S. 158 and east of NC 35.

Pennsylvania

SJBP Zone: The area north of I–80 and west of I–79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area: Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street;

then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone: Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to County Road C66, then east along County Road C66 to the point of beginning.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; then west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; then north along the east boundary of Dahlgren Township to U.S. Highway 212; then west along U.S. Highway 212 to State Trunk Highway (STH) 284; then north on STH 284 to County State Aid Highway (CSAH) 10; then north and west on CSAH 10 to CSAH 30; then north and west on CSAH 30 to STH 25; then east and north on STH 25 to CSAH 10; then north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; then east on CSAH 2 to U.S. Highway 61; then south on U.S. Highway 61 to State Trunk Highway (STH) 97; then east on STH 97 to the intersection of STH 97 and STH 95; then due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: Beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; then along the U.S. Highway 52 to State Trunk Highway (STH) 57; then along STH 57 to the municipal boundary of Kasson; then along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; then along CSAH 13 to STH 30; then along STH 30 to U.S. Highway 63; then along U.S. Highway 63 to the south boundary of the State; then along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; then along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to I–94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to U.S. Highway 81, then south on U.S. Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE

Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; then south on U.S. Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to U.S. Hwy 83; then south on U.S. Hwy 83 to I–94; then east on I–94 to U.S. Hwy 83; then south on U.S. Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit: Entire state of South Dakota *except* the Counties of Bennett, Bon Home, Brule, Buffalo, Charles Mix, Custer east of SD Highway 79 and south of French Creek, Dewey south of 212, Fall River east of SD Highway 71 and U.S. Highway 385, Gregory, Hughes, Hyde south of U.S. Highway 14, Lyman, Perkins, Potter west of U.S. Highway 83, Stanley, and Sully.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Maryland

Special Teal Season Area: Calvert, Caroline, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties and those parts of Cecil, Harford, and Baltimore Counties east of Interstate 95; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to

U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

MVP—Upper Peninsula Zone: The MVP—Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP—Lower Peninsula Zone: The MVP—Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch County, north continuing along the western border of Branch and Calhoun Counties to the northwest corner of Calhoun County, then east to the southwest corner of Eaton County, then north to the southern border of Ionia County, then east to the southwest corner of Clinton County, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm Counties to the southern border of Isabella county, then east to the southwest corner of Midland County, then north along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana

The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma

That portion of the State west of I–35.

South Dakota

That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line, then south along the Texas-Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas-Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, and those portions of Johnson County east of Interstates 25 and 90 and Sheridan County east of Interstate 90.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area—That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and Adjacent Areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as

it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2009-10 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept 24
Closing Date	Jan. 20	Last Sunday in Jan	Last Sunday in Jan	Sun. nearest Jan. 20	Last Sunday in Jan	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23 Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan 26.

[FR Doc. E9–17559 Filed 7–23–09; 8:45 am]
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Federal Register

Friday,
July 24, 2009

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 229, 600, and 635

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Amendment 3; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229, 600, and 635

[Docket No. 080519678–8685–01]

RIN 0648–AW65

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; availability of a Fishery Management Plan (FMP) amendment; request for comments; public hearings.

SUMMARY: NMFS announces the availability of the draft Amendment 3 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). Amendment 3 examines different management alternatives available to rebuild blacknose sharks consistent with the 2007 small coastal shark (SCS) stock assessment, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law. Amendment 3 also examines management alternatives to end overfishing of blacknose sharks and shortfin mako sharks, consistent with the Magnuson-Stevens Act, and also proposes adding smooth dogfish under NMFS management. The proposed rule to implement Amendment 3 would, among other things, establish a quota for blacknose sharks and non-blacknose SCS, prohibit the use of gillnet gear to catch sharks from South Carolina south, prohibit the retention of blacknose sharks in recreational fisheries, take action at the international level to end overfishing of shortfin mako through participation in appropriate international fisheries organizations, such as International Commission for the Conservation of Atlantic Tunas (ICCAT), promote the live release of shortfin mako sharks, add smooth dogfish under NMFS management, establish a commercial quota for smooth dogfish, require smooth dogfish fishermen to obtain the appropriate Federal permit, and establish a mechanism for specifying Annual Catch Limits (ACLs) and Accountability Measures (AMs) for Atlantic sharks. These changes could affect all fishermen, commercial and recreational, who fish for sharks in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

DATES: Comments on this proposed rule, draft Amendment 3 and draft Environmental Impact Statement (DEIS) and related analyses must be received no later than 5 p.m. on September 22, 2009. NMFS will hold nine public hearings on this proposed rule and draft Amendment 3 in August and September 2009. For specific dates and times *see* the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The public hearings will be held in New Hampshire, New Jersey, Maryland, North Carolina, South Carolina, Florida, Alabama, and Louisiana. For specific locations *see* the **SUPPLEMENTARY INFORMATION** of this document.

Written comments on the proposed rule and draft Amendment 3 may be submitted to Karyl Brewster-Geisz, Highly Migratory Species Management Division:

- *Mail:* 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope Shark Amendment 3 comments.
- *Fax:* 301–713–1917.
- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Instructions: All comments received are a part of the public record and will generally be posted to Portal *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''n/a'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft Amendment 3 to the Consolidated HMS FMP, including the DEIS, the latest shark stock assessments, and other documents relevant to this rule are available from the Highly Migratory Species Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms* or by contacting LeAnn Southward Hogan at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or LeAnn Southward Hogan at 301–713–2347 or fax 301–713–1917 or Jackie Wilson at 240–338–3936 or fax 404–806–9188.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. In 1999, NMFS revised the 1993 FMP and included swordfish and tunas in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP was amended in 2003, and in 2006, NMFS consolidated the Atlantic tunas, swordfish, and shark FMP and its amendments and the Atlantic billfish FMP and its amendments in the 2006 Consolidated Atlantic HMS FMP. This amendment amends the 2006 Consolidated HMS FMP. The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

On May 7, 2008, NMFS announced its determination that blacknose sharks are overfished with overfishing occurring while Atlantic sharpnose sharks, bonnethead sharks, and finetooth sharks are not overfished and do not have overfishing occurring (73 FR 25665). These determinations were based on the results of the 2007 SCS stock assessment, which was conducted in a manner similar to the Southeast Data Assessment and Review (SEDAR) process that is used by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils. NMFS has found that this 2007 SCS stock assessment is the best available science regarding the status of SCS. The status determination criteria that are used to determine the status of Atlantic HMS are fully described in Chapter 3 of the 1999 FMP and are not repeated here.

NMFS has also determined that blue shark stocks are not overfished and overfishing is not occurring and that shortfin mako shark stocks are not overfished, are approaching an overfished condition, and have overfishing occurring. These determinations are based on international stock assessments conducted by the ICCAT's Standing Committee for Research and Science (SCRS). While these assessments are international, the status determination criteria are the same as those used for SCS and all Atlantic sharks. NMFS has determined the ICCAT stock assessment to be the best available science for managing shortfin mako and blue sharks.

Under the Magnuson-Stevens Act, NMFS is required to establish a rebuilding plan for blacknose sharks and to end overfishing for blacknose and shortfin mako sharks. NMFS announced its intent to conduct an environmental impact statement (EIS) on May 7, 2008 (73 FR 25665), and held

five scoping meetings in 2008 (73 FR 37932, July 2, 2008; 73 FR 53407, September 13, 2008). During scoping, NMFS also consulted with the HMS Advisory Panel in October 2008 (73 FR 53407, September 13, 2008), the five Regional Fishery Management Councils on the east coast, and the Atlantic States and Gulf States Marine Fisheries Commissions. NMFS also presented information at a bycatch reduction workshop that was held by the Gulf and South Atlantic Fisheries Foundation. In February 2009, NMFS presented the Predraft of Amendment 3 to the HMS Advisory Panel (73 FR 67135, November 13, 2008).

Based in part on the comments received during scoping and from the HMS Advisory Panel on the Predraft, NMFS proposes a number of management measures within Amendment 3. Consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable laws, the objectives for this proposed rule are to: (1) Implement a rebuilding plan for blacknose sharks; (2) end overfishing for blacknose and shortfin mako sharks; (3) provide an opportunity for the sustainable harvest of finetooth, bonnethead, Atlantic sharpnose sharks and other sharks, as appropriate; (4) prevent overfishing of Atlantic sharks; and (5) consider management measures for smooth dogfish sharks in Federal waters, as appropriate.

In addition to the proposed management alternatives, NMFS proposes to take additional administrative actions to clarify regulations and update various scientific and other names. These administrative actions are described in the section entitled ''Administrative Actions.'' NMFS also discusses ACLs and AMs for the Atlantic shark fisheries to include a mechanism for specifying ACLs and AMs for Atlantic sharks.

NMFS prepared a DEIS for the draft Amendment 3 that discusses the impact on the environment as a result of this rule and the proposed management measures. A copy of the DEIS/draft Amendment 3 is available from NMFS (*see* **ADDRESSES**). The Environmental Protection Agency is expected to publish the notice of availability for this DEIS on or about the same date that this proposed rule publishes.

ACLs and AMs

The Magnuson-Stevens Conservation Act as amended and reauthorized in 2007 included a mandate in Section 303(a)(15) for each FMP to include a mechanism for specifying ACLs at a level to prevent overfishing and to include AMs to ensure ACLs would not be exceeded. On January 16, 2009, NMFS published the final National Standard 1 Guidelines (NSG1) which, among other things, provided procedures and guidance for implementing the ACL and AM requirements of the Magnuson-Stevens Act (74 FR 3178). Per NSG1, ACLs and AMs apply ''unless otherwise provided for under an international agreement in which the United States participates.'' While SCS, LCS, and pelagic sharks are predominately managed through domestic management measures, in recent years ICCAT has adopted a number of recommendations regarding sharks (*e.g.,* ICCAT recommendations 2004–10, 2005–05, 2007–06, and 2008–07). The Atlantic Tunas Convention Act (ATCA) authorizes Secretary of Commerce to promulgate regulations, as may be necessary and appropriate, to implement binding ICCAT recommendations. Some shark species or complexes (*e.g.,* SCS) will likely be managed solely through domestic actions taken under the Magnuson-Stevens Act. ACLs and AMs will apply to those species. Other shark species (*e.g.,* shortfin mako sharks) will be managed via a mix of domestic actions taken under the Magnuson-Stevens Act and international actions taken pursuant to international fishery agreements or through other appropriate international organizations. The method for managing specific species will likely change overtime as Regional Fishery Management Organizations, including ICCAT if appropriate, begin to manage sharks internationally. While the proposed rule provides a mechanism for setting ACLs and AMs for the pelagic shark complex, which includes shortfin mako, it is not possible for the U.S. to end overfishing of the species without international cooperation since the relative U.S. contribution to fishing mortality is minor compared to cumulative fishing mortality related to foreign fishing outside the U.S. EEZ.

According to NSG1, Section 303(a)(15) mandates that a mechanism for specifying ACLs at a level to prevent overfishing and AMs to ensure ACLs would not be exceeded be included in FMPs. The process for establishing ACLs and AMs for Atlantic sharks is outlined below. NMFS has determined that the overfishing limit (OFL) is greater than or equal to the allowable biological catch (ABC) limit, which is greater than or equal to the ACL. As such, NMFS is establishing for all Atlantic sharks the following guidelines to use when establishing ACLs and AMs. NMFS considers the OFL to be the annual amount of catch that corresponds to the estimate of maximum fishing mortality threshold (MFMT) applied to the stock abundance. The ABC would be established to account for uncertainty in the assessment. Ideally, the actual ABC would be established as part of stock assessment reports, results, and/or conclusions. However, because the SCS assessment predates the ACL final rule and until new stock assessments for HMS incorporate the new ACL and AM guidance, for sharks, NMFS is determining that the ABC is lower than the OFL to account for scientific uncertainty, and the ABC is equal to the ACL.

In general, the ACL is equivalent to the total allowable catch (TAC) for all the fisheries that interact with a given shark species. The TAC, or ACL, is provided as part of the stock assessment report, result, and/or conclusion. If the OFL can be estimated and the ABC is not available, then the ACL should be less than the OFL to account for scientific uncertainty. For overfished shark stocks, the ACL is equal to the stock assessment projection that shows rebuilding with a 70-percent chance of success. NMFS uses the 70 percent probability for rebuilding for sharks given their life history traits, such as late age of maturity and low fecundity compared to other fish stocks. This ACL is lower than the OFL. Additionally, NMFS may establish ''sector ACLs,'' which would include landings and discards, and ''commercial landings components of the sector ACL,'' which would be the commercial landings quota for specific shark fisheries.

For sharks, the quotas are generally established for the commercial fishery, not the recreational fishery. NMFS has not established quotas for the recreational shark fishery due to the difficulty in estimating recreational catches in real time, but may consider doing so in the future. While the shark recreational fishery does not have a formal quota, catches within the recreational shark fishery are considered when stock assessments are conducted and taken into account when NMFS establishes the OFL, ABC, ACL, and TAC. NMFS also takes the recreational catches, along with discards from the commercial sector, into account when establishing the commercial quota or ''commercial landings components of the sector ACL.'' Because sector ACLs are being used, sector AMs will also be used. This proposed rule changes the quotas for SCS and establishes a commercial quota for smooth dogfish. It does not change the quotas that were

previously established for LCS and pelagic sharks.

The NSG1 also requires NMFS to establish AMs. NMFS already has established AMs along with measures analogous to allowable catch targets (ACTs) in commercial Atlantic shark fisheries. Specifically, overharvests of the commercial shark quotas are deducted from the next fishing year's quota. In addition, underharvests for shark species that are not overfished or are not experiencing overfishing are added to the base quota the following year and capped at 50 percent of the base quota. There is no carryover of underharvests for shark species that are unknown, overfished, or experiencing overfishing. In addition, NMFS closes the quota for each shark species/complex by filing a notice in the **Federal Register** when 80 percent of a given quota is filled. The closure goes into effect five days from the date of filing. Eighty percent of the shark quota is, therefore, the annual catch target (ACT). The measures in this proposed rule and in draft Amendment 3 do not change these AMs.

Blacknose Shark Rebuilding Plan

Under National Standard (NS) 1 of the Magnuson-Stevens Act and implementing regulations (50 CFR 600.310), NMFS is required to ''prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.'' In order to accomplish this, NMFS must determine the maximum sustainable yield (MSY) and specify status determination criteria to allow a determination of the status of the stock. In cases where the fishery is overfished, NMFS must take action to rebuild the stock (by specifying rebuilding targets). NMFS must take action with ACLs and AMs to prevent overfishing for stocks currently overfishing by 2010, and for all other stocks beginning 2011 onward. NMFS outlined the status determination criteria and a set of rebuilding targets in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and maintained those criteria and targets in the 2006 Consolidated HMS FMP. This amendment does not change these criteria or targets.

As described in the NSG1, if a stock is overfished, NMFS is required to ''prepare an FMP, FMP amendment, or proposed regulations * * * to specify a time period for ending overfishing and rebuilding the stock or stock complex that will be as short as possible as described under section 304(e)(4) of the Magnuson-Stevens Act'' (50 CFR 600.310(j)(2)(ii)). A rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of the fishing mortality rates in the rebuilding plan. The time frame to rebuild the stock or stock complex must be as short as possible taking into account a number of factors including: The status and biology of the stock or stock complex; interactions between the stock or stock complex and other components of the marine ecosystem; the needs of the fishing communities; recommendations by international organizations in which the United States participates; and management measures under an international agreement in which the United States participates. The time frame for rebuilding may not exceed ten (10) years unless a longer time is otherwise dictated by the biology of the species, other environmental conditions, or management measures established under an international agreement in which the U.S. participates.

The lower limit of the specified time frame for rebuilding is determined by the status and biology of the stock and is defined as ''* * * the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality'' (50 CFR 600.310(j)(3)(i)(A)). The NS 1 guidelines specify two strategies for determining the rebuilding time frame depending on the lower limit of the specified time frame for rebuilding. The first strategy (50 CFR 600.310(j)(3)(i)(C)) states that: ''If T_{min} [minimum time for rebuilding a stock] for the stock or stock complex is 10 years or less, then the maximum time allowable for rebuilding (T_{max}) that stock to its B_{MSY} is 10 years.'' The second strategy (50 CFR 600.310(j)(3)(i)(D)) specifies that if T_{min} for the stock or stock complex exceeds 10 years, then the maximum time allowable for rebuilding a stock or stock complex to its B_{MSY} is T_{min} plus the length of time associated with one generation time for that stock or stock complex. ''Generation time'' is the average length of time between when an individual is born and the birth of its offspring.

The latest 2007 stock assessment of SCS in the U.S. Atlantic and Gulf of Mexico is a peer-reviewed assessment and was conducted in a SEDAR-like process. The 2007 assessment includes catch estimates through 2005, biological data, and a number of fishery-independent and fishery-dependent catch rate series. The stock assessment considered several rebuilding scenarios for blacknose sharks and found that, under a no fishing scenario, the stock would take 11 years to rebuild. Adding a generation time (8 years), as described under NS1 for species that require more than 10 years to rebuild even if fishing mortality was eliminated entirely, the target year for rebuilding the stock was estimated to be 2027 (8 years mean generation time + 11 years to rebuild if fishing mortality eliminated = 19 years including 2009). Thus, the stock assessment found that the shortest time possible for the stock to be rebuilt based on the biology of blacknose sharks is 2027 with a 70-percent probability of success if a TAC of 19,200 blacknose sharks per year were implemented across all fisheries that interact with blacknose sharks. As described above and in the DEIS, NMFS uses a 70-percent probability of rebuilding to ensure that the intended results of a management action are actually realized given the life history traits of sharks.

According to the latest blacknose shark stock assessment, an average of 86,381 blacknose sharks were killed each year between 1999–2005 in different fisheries either as targeted catch or as bycatch. In order to attain the blacknose shark TAC of 19,200, NMFS needs to reduce the number of blacknose sharks killed each year across all fisheries by at least 78 percent. The stock assessment indicates that approximately 45 percent of blacknose sharks are killed as bycatch in the Gulf of Mexico and Atlantic shrimp trawl fisheries, and the rest of the mortality occurs within the HMS Atlantic commercial and recreational shark fisheries. NMFS will continue to work and coordinate with the Gulf of Mexico and South Atlantic Fishery Management Councils to create management measures to meet bycatch reduction measures to reduce mortality of blacknose sharks in the shrimp trawl fisheries, as appropriate. NMFS will also work to reduce the mortality of blacknose sharks in Atlantic shark fisheries through the implementation of management measures, as analyzed in draft Amendment 3.

Currently, average commercial annual landings of blacknose sharks within the Atlantic shark fisheries are 27,484 blacknose sharks, and average annual commercial dead discards are 5,007 blacknose sharks. A 78-percent reduction in commercial blacknose landings (6,046 blacknose sharks per year) and discards (1,102 blacknose sharks per year) in the Atlantic shark fisheries equates to a total mortality of 7,148 blacknose sharks per year in the commercial fishery (6,046 + 1,102 = 7,148). Assuming an average commercial blacknose weight across all commercial gears (including shrimp trawl) of 6.3 lb dw, these 7,148 blacknose sharks is equivalent to 45,032

lb dw (7,148 blacknose sharks x 6.3 lb dw = 45,032 lb dw)(34 mt dw). In addition, on average, 54 blacknose sharks are taken each year under the exempted fishing program. Given the average weight of the blacknose sharks taken under the exempted fishing program is 3.3 lb dw, this equals approximately 178.2 lb dw of blacknose sharks landed under the exempted fishing program each year. Thus, no more than 44,853.8 lb dw (45,032 lb dw—178.2 lb dw = 44,853.8 lb dw)(20.3 mt dw) or 7,094 blacknose sharks (7,148 blacknose sharks—54 blacknose sharks taken in the EFP program = 7,094 blacknose sharks) can be landed by the commercial fishery. As such, the commercial sector ACL for blacknose sharks is equal to 44,853.8 lb dw.

In addition, on average, the recreational fishery landed 10,408 blacknose sharks per year. A 78-percent reduction in recreational landings would result in 2,290 blacknose sharks per year. This results in an overall annual allowance of 9,438 blacknose sharks in all HMS fisheries.

The Proposed Management Measures

The following is a summary of the alternatives analyzed in the DEIS for Amendment 3. Additional analyses and descriptions are provided in the DEIS.

A. SCS Commercial Quotas

NMFS is considering several alternatives for SCS relating to commercial quotas and species complexes. The alternatives for the Atlantic shark fishery range from maintaining the status quo to restructuring the SCS complex and prohibiting the retention of blacknose sharks. Specifically, the alternatives considered are: alternative A1—no action; alternative A2—establish a non-blacknose SCS quota of 392.5 mt dw and a blacknose commercial quota of 13.5 mt dw; alternative A3—establish a non-blacknose SCS quota of 42.7 mt dw, a blacknose commercial quota of 16.6 mt dw, and allow all current authorized gears for sharks; alternative A4—establish a non-blacknose SCS quota of 56.9 mt dw, a blacknose commercial quota of 14.9 mt dw, and remove shark gillnet gear as an authorized gear for sharks; and alternative A5—close the entire SCS fishery. Alternative A4 is the preferred alternative.

Alternative A4, the preferred alternative, would remove blacknose sharks from the SCS quota and create a blacknose shark-specific quota. The quota of the non-blacknose SCS would be 56.9 mt dw (125,487 lb dw), which is a 76-percent reduction from the average landings of finetooth, Atlantic sharpnose, and bonnethead sharks from 2004 through 2007. Under this alternative, NMFS would establish a blacknose shark-specific quota of 14.9 mt dw (32,753 lb dw), which is the amount of blacknose sharks that would be harvested while the quota for non-blacknose SCS is harvested assuming similar catch rates and number of trips as from 2004–2007. Under this alternative, fishermen with an incidental shark limited access permit would not be allowed to retain any blacknose sharks. In addition, this alternative assumes that gillnet gear would not be allowed to harvest sharks from South Carolina south (*see* the alternatives in section B below) and that fishermen would fish for SCS, including blacknose sharks, in a directed fashion until either the non-blacknose SCS or blacknose shark quota reached 80 percent. At that time, both the non-blacknose SCS and the blacknose shark fisheries would close, all SCS would be discarded, and fishermen would target other species and continue to catch SCS as bycatch. Assuming the fishery operates in this fashion, NMFS estimates that total mortality for blacknose sharks would be 37,763 lb dw, which is below the commercial landings component of 44,853.8 lb dw for commercially caught blacknose sharks within the Atlantic shark fisheries.

Alternative A4 is anticipated to have positive ecological impacts for blacknose, Atlantic sharpnose, bonnethead, and finetooth sharks as it would reduce landings by 76 percent for blacknose sharks and 76 percent for non-blacknose SCS based on current landings. In addition, it would reduce discards by 81 percent for blacknose sharks and 2 to 3 percent for non-blacknose SCS based on current discards if gillnets are prohibited in the Atlantic, Gulf of Mexico, and Caribbean under either alternative B2 or B3 (described below). Cumulatively, this would reduce mortality of blacknose sharks by at least 78 percent and would meet the rebuilding plan for blacknose sharks. Discards of blacknose and non-blacknose SCS predominately occur on BLL gear, therefore, removing gillnet gear is not expected to affect discards of either blacknose sharks or non-blacknose SCS. NMFS assumes that if retention of sharks is prohibited with gillnet gear, directed gillnet fishing for sharks would cease; however, fishermen would continue to use gillnet gear to target other species and discard any sharks that were caught. In addition, alternative A4 would reduce landings of large coastal sharks (LCS), predominately blacktip sharks, which are also caught in gillnet gear. If gillnets are prohibited in the Atlantic, Gulf of Mexico, and Caribbean Sea under alternative A4 and either alternative B2 or B3, NMFS estimates that LCS landings could decrease by 101,409 to 104,132 lb dw compared to current average landings of 3,170,155 lb dw from 2004–2007. Dead discards could decrease by 50,797 and 52,979 lb dw compared to average annual discards of 359,129 lb dw according to Amendment 2 to the 2006 Consolidated HMS FMP. These LCS reductions could be greater given management measures that were implemented under Amendment 2 to the 2006 Consolidated HMS FMP, which reduced quotas and trip limits in the directed LCS fishery starting in July 2008. Therefore, NMFS anticipates that this alternative would also have positive ecological impacts on LCS.

Under this alternative, total annual gross revenues from landings of non-blacknose SCS are anticipated to be $159,368. This is a 76-percent reduction in annual gross revenues from the gross revenues expected under alternative A1 ($661,513). Since directed permit holders land approximately 97 percent of the non-blacknose SCS, NMFS anticipates that directed permit holders would lose more in annual gross revenues compared to incidental permit holders. Under this alternative, total annual gross revenues from non-blacknose SCS for directed shark permit holders would be $153,841, which is a loss of $487,165 in annual gross revenues or a 76-percent reduction in annual gross revenues from the gross revenues expected under alternative A1 ($641,006). Incidental permit holders land approximately 3 percent of the non-blacknose SCS. Total annual gross revenues from non-blacknose SCS for incidental shark permit holders would be $4,922, which is a loss of $15,585 in annual gross revenues or a 76-percent reduction in annual gross revenues from the gross revenues expected under alternative A1 ($20,507).

The blacknose shark quota would also be reduced by 76 percent based on average landings from 2004–2007. Total annual gross revenues for the blacknose shark landings for the directed fishery could decrease from $172,197 under alternative A1 to $41,269 under preferred alternative A4. This is a loss of $130,928 or a 76-percent reduction in total annual gross revenues from blacknose sharks for directed shark fishermen. Because incidental fishermen would not be able to retain blacknose sharks, they would lose an estimated $12,054 in annual gross revenues from blacknose shark landings.

This alternative would also prohibit the use of gillnets to land sharks as explained under alternatives B2 and B3. Under alternative A4 and either B2 or B3, lost annual gross revenues for all vessels landing non-blacknose SCS using gillnet gear would be between $275,008 and $287,427. This is a reduction of 42 to 43 percent in the annual gross revenues for the entire non-blacknose SCS fishery compared to alternative A1 ($661,513). Total lost annual gross revenues for directed shark permit holders using gillnet gear to land non-blacknose SCS would be between $268,580 and $275,832, which is a reduction of 42 to 45 percent from the annual gross revenues for directed permits holders under alternative A1 ($641,006).

The five to seven gillnet vessels that primarily target non-blacknose SCS may experience higher losses. Total lost annual gross revenues for incidental shark permit holders using gillnet gear to land non-blacknose SCS under alternative A4 and either B2 or B3 would be between $6,429 and $11,595, which is a reduction of 43 to 68 percent from alternative A1 ($20,507).

In addition, LCS are also landed with gillnet gear. As such, alternative A4 in combination with alternatives B2 and B3 would also impact LCS fishermen using gillnet gear. Under alternative A4 and either B2 or B3, lost annual gross revenues for all vessels landing LCS using gillnet gear would be between $106,479 and $109,339. This is a reduction of three percent in the annual gross revenues for the entire LCS fishery compared to alternative A1 ($3,328,663).

NMFS prefers alternative A4 at this time because by reducing overall effort in the SCS fishery, NMFS would reduce the level of blacknose shark discards such that, assuming all the mortality from other fisheries is also reduced appropriately, the total blacknose shark mortality would stay below the TAC needed to rebuild the stock. Under alternative A4, blacknose shark landings would decrease by 76 percent and discards would decrease by 81 percent. Landings for non-blacknose SCS would also decrease by 76 percent and discards could decrease by 2–3 percent. In addition, alternative A4 in combination with either alternative B2 or B3 could decrease landings of LCS by only three percent, but could decrease discards of LCS by up to 15 percent. These reductions in landings of all SCS would result in a 76-percent reduction in gross revenues from SCS landings overall; however, such a reduction is needed to lower the overall mortality on blacknose sharks. While gillnet fishermen would be impacted the most and would have estimated annual gross revenue losses between $377,928 and $365,067, alternative A4 would allow for a higher non-blacknose SCS than blacknose shark quota (56.9 mt dw) compared to alternative A3 (42.7 mt dw) because associated gillnet effort is anticipated to decline more under alternative A4 leaving a larger quota available for the rest of the SCS fishery. This higher quota would benefit the larger SCS fishery, while the prohibition on the use of gillnets would affect a small number of directed gillnet fishermen.

Under alternative A1, the no action alternative, NMFS would maintain the current SCS complex and annual quota for the complex of 454 metric ton (mt) dressed weight (dw). Under this alternative, there would be neutral social and economic impacts to directed and incidental fishermen in the short-term as the gross revenues from SCS landings, including blacknose shark landings, would be the same as the status quo. These measures would also have neutral ecological impacts for finetooth, Atlantic sharpnose, and bonnethead sharks within the SCS complex, which have all been determined to not be overfished with no overfishing occurring. However, this alternative would have negative ecological impacts on blacknose sharks, which have been determined to be overfished with overfishing occurring, as there would be no reduction in current blacknose landings. Without reductions in current blacknose shark mortality, NMFS would not be able to achieve the TAC of 19,200 blacknose sharks per year recommended by the 2007 blacknose shark stock assessment. Without achieving such a reduction in mortality, blacknose sharks would not be able to rebuild within their specified rebuilding timeframe and landings and associated revenues would likely decline in the long-term as the blacknose shark stock continues to decline.

Alternative A2 would remove blacknose sharks from the SCS quota and create a blacknose shark-specific quota and a separate non-blacknose SCS quota, which would be comprised of finetooth, Atlantic sharpnose, and bonnethead sharks. The non-blacknose SCS quota would be the current SCS quota (454 mt dw) minus average annual landings of blacknose sharks (136,595 lb dw or 61.5 mt dw per year). This would result in an non-blacknose SCS quota of 392.5 mt dw per year (454 mt dw − 61.5 mt dw = 392.5 mt dw). The blacknose shark quota would be a 78-percent reduction in current landings or 13.5 mt dw (29,762 lb dw per year) (61.5 mt dw × 78 percent = 48 mt dw; 61.5 mt dw − 48 mt dw = 13.5 mt dw per year). This is equivalent to approximately 2,834 blacknose sharks per year assuming an average commercial shark fishery weight (excluding bycatch and recreational landings) of blacknose = 10.5 lb dw.

Alternative A2 would have neutral ecological impacts on finetooth, Atlantic sharpnose, and bonnethead sharks as it would most likely not result in reduced landings of any of these species since the overall SCS quota would only be reduced by the average annual blacknose shark landings. However, although this alternative could reduce landings of blacknose sharks by 78 percent, because discards would continue as fishermen directed on non-blacknose SCS, overall mortality for blacknose sharks would still be above the commercial sector ACL of 44,853.8 lb dw per year (7,094 blacknose sharks per year), even if the retention of blacknose sharks was prohibited. This would have negative ecological impacts for blacknose sharks as it would not allow them to rebuild within their allotted rebuilding time.

NMFS anticipates that non-blacknose SCS landings would not decrease as the non-blacknose SCS quota would only be reduced by the average blacknose shark landings. Total gross revenues for non-blacknose SCS landings are anticipated to be the same for alternative A2 as under alternative A1 ($661,513). As such, social and economic impacts on directed and incidental shark fishermen for the non-blacknose SCS quota would be neutral under alternative A2 in the short term. However, the blacknose shark quota would be a 78-percent reduction based on average landings from 2004–2007. Total gross revenues for the blacknose shark landings for the entire fishery would decrease from $172,197 under alternative A1 to $37,500 under this alternative. Because directed permit holders are responsible for the majority of blacknose shark landings, it is anticipated that directed permit holders would experience the largest economic impacts under this alternative.

NMFS does not prefer alternative A2. Specifically, under this alternative, discards of blacknose sharks would continue as fishermen directed on SCS other than blacknose shark. This would result in a higher overall mortality for blacknose sharks than what would be allowed under the rebuilding plan. In the long term, a decrease in revenues may be expected as the blacknose shark stock continues to decline resulting in reduced landings.

Alternative A3 is similar to alternative A4 in that it would remove blacknose sharks from the SCS quota and create a blacknose shark quota and a separate non-blacknose SCS quota equal to 42.7 mt dw (94,115 lb dw), which would be comprised of finetooth, Atlantic sharpnose, and bonnethead sharks. The non-blacknose SCS quota equates to an 82-percent reduction from the average current landings of finetooth, Atlantic sharpnose, and bonnethead sharks from 2004 through 2007. The blacknose shark quota would be 16.6 mt dw (36,526 lb dw), which is the amount of blacknose sharks that would be harvested while the non-blacknose SCS quota is harvested assuming fishermen continue to direct on non-blacknose SCS. Under this alternative, as with alternative A4, incidental fishermen would not be allowed to retain any blacknose sharks. Also, this alternative, as with alternative A4, assumes that directed fishermen would fish for non-blacknose SCS in a directed fashion until the non-blacknose SCS quota reached 80 percent. At that time, the entire SCS fishery, including blacknose sharks, would close, and all SCS would be discarded. The main difference between this alternative and alternative A4 is that this alternative assumes the gillnet fishery continues as it does now (alternative B1 as described below). Under this alternative, NMFS estimates that total mortality for blacknose sharks would be 43,601 lb dw, which is below the commercial sector ACL of 44,853.8 lb dw.

Alternative A3 is anticipated to have positive ecological impacts for blacknose, Atlantic sharpnose, bonnethead, and finetooth sharks as it would reduce landings by 73 percent for blacknose sharks and 82 percent for non-blacknose SCS based on current landings. In addition, it would reduce discards by 74 percent for blacknose sharks but could increase discards by up to 62 percent for non-blacknose SCS based on current discards.

Under alternative A3, total annual gross revenues for non-blacknose SCS for the entire fishery are anticipated to be $119,526. This is an 82-percent reduction in gross revenues from the gross revenues expected under alternative A1 ($661,513). Since directed permit holders land approximately 97 percent of the non-blacknose SCS landings as explained in alternative A1, NMFS anticipates that directed permit holders would lose more in gross revenues from non-blacknose SCS landings compared to incidental permit holders. Total gross revenues for directed shark permit holders of non-blacknose SCS under alternative A3 would be $115,821, which is a loss of $525,185 in gross revenues or an 82-percent reduction in gross revenues from the gross revenues expected under alternative A1 ($641,006). Total gross revenues for incidental shark permit holders of non-blacknose SCS under alternative A3 would be $3,705, which is a loss of $16,802 in gross revenues and an 82-percent reduction in gross revenues from the gross revenues expected under alternative A1 ($20,507).

Under alternative A3, total annual gross revenues for the blacknose shark landings for the directed fishery would decrease from $172,197 under the alternative A1 to $46,023, which is a loss of $126,174, or 73 percent. Because incidental fishermen would not be able to retain blacknose sharks, they would lose an estimated $12,054 in gross revenues from blacknose shark landings. Given alternative A3 has a larger reduction in quota of non-blacknose SCS and would affect more directed and incidental permit holders compared to alternative A4, NMFS is not preferring alternative A3 at this time.

Alternative A5 would close the entire SCS commercial shark fishery, prohibiting the landing of any SCS, including blacknose sharks. This alternative would have positive ecological impacts for all SCS species as it would prohibit landings of finetooth, Atlantic sharpnose, bonnethead, and blacknose sharks. On average, landings of finetooth, Atlantic sharpnose, bonnethead, and blacknose sharks were 120,000 lb dw, 363,303 lb dw, 37,562 lb dw, and 136,595 lb dw, respectively. However, since shark fishermen would presumably continue to fish for LCS using BLL gear, discards of SCS could continue on BLL gear. Additionally, fishermen using gillnet gear in other fisheries would continue to use gillnets. As such, discards of SCS on gillnet gear would also continue.

This alternative could also have positive ecological impacts for LCS. Since gillnets are the primary gear used to target SCS, except for strikenets, which are used to target blacktip sharks, presumably all directed shark gillnet fishing, with the exception of fishing with strikenets, would stop under alternative A5. If all directed shark gillnet fishing stopped under alternative A5, NMFS estimates that landings of LCS could decrease by approximately 102,171 lb dw (3 percent) compared to current average landings of 3,170,155 lb dw from 2004–2007; however, this decrease may be slightly less if blacktip sharks continue to be harvested with directed strikenet gear. Alternative A5 could also decrease LCS dead discards by 52,979 lb dw or 15 percent compared to average annual discards of 359,129 lb dw from 2003–2005.

Under alternative A5, NMFS estimates there would be a loss of average annual gross revenues of $661,513 for non-blacknose SCS and $172,197 from blacknose shark landings for a total loss of $833,710 in annual gross revenues from SCS landings. Directed permit holders would lose $641,006 in average annual gross revenues from non-blacknose SCS landings and $160,143 in average annual gross revenues from blacknose shark landings for a total of $801,149 in average annual gross revenues. Incidental permit holders would lose $20,507 in average annual gross revenues from non-blacknose SCS landings and $12,054 in average annual gross revenues from blacknose shark landings for a total of $32,561 in average annual gross revenues under alternative A5. This alternative could also result in a decrease in average annual gross revenues of LCS of $107,280.

While this alternative could reduce blacknose mortality below the commercial sector ACL of 44,853.8 lb dw, it would also completely eliminate the fishery for all other SCS species. This would severely curtail data collection of all SCS that could be used for future stock assessments and would have larger economic impacts on directed and incidental fishermen than any of the other alternatives. Thus, NMFS does not prefer this alternative at this time.

B. Commercial Gear Restrictions

NMFS considered several alternatives for commercial gear restrictions ranging from no action to closing the gillnet fishery. Specifically, NMFS considered alternative B1—no action, maintain current gear regulations; alternative B2—close the gillnet fishery and remove gillnet gear from authorized gear type for commercial shark fishing; and alternative B3—close the gillnet fishery to commercial shark fishing from South Carolina south, including the Gulf of Mexico and Caribbean. Alternative B3 is the preferred alternative.

Under alternative B3, NMFS would close the gillnet fishery to commercial shark fishing from South Carolina south, including the Gulf of Mexico and Caribbean Sea. This alternative would eliminate the predominant gear type used to harvest blacknose sharks in the South Atlantic region and would help rebuild the blacknose shark stock by reducing gillnet mortality throughout their habitat range. Blacknose sharks are commonly found from North Carolina to Brazil, including the Gulf of Mexico and Caribbean Sea. This alternative would

also help mitigate impacts of managing the smooth dogfish fishery (*see* alternatives F2 and F3), which uses gillnet gear predominately from North Carolina north. This alternative is expected to have a positive ecological impact for the overfished blacknose shark population and for the SCS fishery as a whole by reducing landings from the primary gear used to target SCS. This prohibition is expected to decrease the total landings per year of directed and incidental shark permit holders for all SCS from 659,459 lb dw per year to 158,240 lb dw per year. This is a 76 percent reduction. Blacknose sharks are not reported as landed with gillnets north of South Carolina and NMFS does not expect prohibiting gillnets from South Carolina south to change this. The directed blacknose shark landings are anticipated to be reduced from 127,033 lb dw per year to 55,858 lb dw per year, or a 44 percent reduction in landings. The incidental blacknose shark landings would drop from 9,562 lb dw per year to 9,262 lb dw per year, or a 3 percent reduction in landings. Under this alternative, NMFS assumes that all directed shark gillnet effort would cease. However, it is estimated that blacknose sharks would still be caught and discarded incidentally by fishermen targeting other species (*i.e.,* Spanish mackerel) using gillnet gear. NMFS estimates that 158.6 blacknose sharks per year (2,284 lb dw per year) would be discarded in these fisheries.

The ecological impacts of alternative B3 on the LCS and smooth dogfish fishery are expected to be minimal since most smooth dogfish landings occur from North Carolina north and the majority of LCS landings occur with BLL gear. With the prohibition of gillnets from South Carolina south, total landings per year of LCS are anticipated to decrease by 101,409 lb dw per year (3 percent of the fishery).

This alternative could have positive ecological impacts on protected species. From 2004–2007, a total of 14 loggerhead and leatherback sea turtles (2 discarded dead) were caught in gillnets. Also, interaction with north Atlantic right whales and dolphin species could occur in shark gillnet fishing areas. In 2006, a right whale was found dead in Florida and available evidence suggests that the entanglement and injuries of the whale by gillnet gear eventually led to the death of the animal. It is unknown if the gillnet gear was from the shark fishery, but the removal of gillnets as an authorized gear type for sharks would reduce interactions with protected species. Some protected shark species that are impacted by gillnets are the sand tiger, sandbar, angel, and dusky sharks. All of these protected species populations would benefit from the elimination of gillnet gear.

This alternative would have a negative social and economic impact on Federally permitted directed and incidental fishermen. The gillnet fishery from South Carolina south accounts for 44 percent of the total landings of SCS by fishermen with directed permits, and 26 percent of SCS landings by fishermen with incidental permits. On average, from South Carolina south, directed shark permit holders land 283,462 lb dw ($358,261) of SCS with gillnet gear. Thus, under this alternative, directed shark fishermen could lose approximately $358,261 of their current $807,792 in annual gross revenues. Similarly, on average, incidental shark permit holders land 5,381 lb dw ($6,807) of SCS with gillnet gear from South Carolina south. This alternative would cause $6,807 in lost SCS annual gross revenues for incidental shark fishermen. Combined, directed and incidental shark fishermen would lose $365,068 from their current annual gross revenues of $833,634.

This alternative would have minor social and economic impacts on the LCS fishery. The directed shark permit holders are estimated to lose 101,132 lb dw per year of LCS landings under alternative B3. This alternative could equate to $106,189 in lost LCS revenues for directed shark fishermen. On average, incidental shark permit holders are estimated to lose 2,761 lb dw of LCS landings. This alternative could equate to $290 in lost LCS revenues for incidental shark permit holders. This represents a 3 percent reduction in LCS annual gross revenues for the total LCS fishery.

This alternative is not expected to have social and economic impacts on the smooth dogfish fishery. This species is primarily caught commercially in gillnet gear from North Carolina north. As such, NMFS does not expect the prohibition of gillnet gear in areas south of North Carolina to impact smooth dogfish fishermen.

The preferred alternative, B3, reduces fishing effort on blacknose sharks by removing gillnet gear from the areas where blacknose sharks interact with gillnet gear. This is anticipated to reduce blacknose shark landings by 71,475 lb dw per year. This alternative also allows gillnet gear in the areas where the majority of the smooth dogfish are landed. By allowing gillnet gear in North Carolina and north, NMFS is mitigating impacts on the smooth dogfish fishery while reducing mortality on blacknose sharks. The removal of gillnet gear from South Carolina south could also have positive ecological impacts to non-blacknose SCS by reducing their landings by an estimated 217,368 lb dw. However, this alternative could also have significant social and economic impacts by affecting approximately 37 directed and 6 incidental SCS and LCS permit holders. It will also reduce SCS and LCS revenues for directed permit holders by $464,450 and SCS and LCS revenues for incidental permit holders by $7,097. This alternative is also anticipated to have positive ecological impacts on protected resources. Given the need to reduce blacknose shark mortality to rebuild the stock, the fact that gillnet gear is the predominate gear used in the Atlantic shark fisheries to harvest blacknose sharks, the fact that this would have minimal impact on smooth dogfish fishermen, and the continuing bycatch concerns regarding this gear, particularly of protected species, NMFS is preferring alternative B3 at this time.

Under alternative B1, the no action alternative, NMFS would maintain BLL, rod and reel, bandit, and gillnet gear as authorized gears in the Atlantic shark fishery and would maintain all the other gear requirements such as corrodible hooks for BLL fishermen and net checks for gillnet fishermen. Since there would be no change to the gear restrictions under alternative B1, the ecological impacts for Atlantic sharpnose, bonnethead, and finetooth sharks would be neutral as these species were not determined to be overfished and overfishing is not occurring. Additionally, any current ecological impacts on LCS and protected resources would continue. However, this no action alternative could have negative ecological impacts on blacknose sharks because NMFS would not be able to achieve the commercial sector ACL of 44,853.8 lb dw per year (7,094 blacknose sharks per year).

No negative social or economic impacts would be anticipated under alternative B1. Currently, directed and incidental SCS fishermen retain a total annual gross revenues of $833,634, while the directed and incidental LCS fishermen have a larger annual gross revenues at $3,328,663. While this alternative would have the fewest socio-economic impacts compared to alternatives B2 and B3, it would not aid in achieving the reduction needed to rebuild blacknose sharks, consistent with the Magnuson-Stevens Act.

Under alternative B2, NMFS would remove gillnet gear as an authorized gear type for commercial shark fishing, which would close the shark gillnet fishery. Shark LAP holders could

continue to use other commercially-authorized gears such as BLL, rod and reel, handline, or bandit gear. This alternative would have positive ecological impacts for SCS, LCS, and smooth dogfish as it would reduce commercial landings and decrease bycatch rates of both target and non-target species, including protected resources. Since gillnets are the dominant gear type used to target SCS, this restriction would have a large impact on the total landings per year. The directed shark permit holders have, on average, total landings of all SCS of 639,015 lb dw per year with all gear types. Of these, 289,546 lb dw are made with gillnet gear. If gillnets were prohibited, the average total landings could drop 45 percent to 349,469 lb dw per year (639,015—289,546 = 349,469 lb dw per year). Shark landings by incidental permit holders would decline 5 percent from 20,443 lb dw per year to 19,497 lb dw per year. Given that commercial blacknose landings in gillnets were 71,827 lb dw per year of the total 136,595 lb dw landings, removing gillnets from the shark commercial landings would help achieve the 78-percent reduction needed to rebuild blacknose sharks. Removing gillnet gear could reduce blacknose shark landings by an estimated 53 percent.

As described above under alternative B3, with the removal of gillnet gear, NMFS assumes that all directed shark gillnet fishing effort would cease. However, blacknose sharks would still be caught and discarded by fishermen targeting other species (*i.e.,* mackerel) and using gillnet gear. NMFS estimates that 158.6 blacknose sharks or 2,248 lb dw per year would be discarded incidentally by these other fisheries.

While LCS are also caught in gillnet gear, as described in alternative B3, the ecological impacts would be minimal for the LCS fishery since bottom longlines are the primary gear type used in the LCS fishery. However, this alternative could have a significant impact on the smooth dogfish fishery because gillnets are the primary gear type used in this fishery. This species is not currently managed under a Federal fishery management plan, and a stock assessment has not been conducted for this species. If alternative F2, adding smooth dogfish under NMFS management, is implemented in conjunction with this alternative, then Federal permit holders would not be allowed to land smooth dogfish sharks using gillnet gear. Prohibiting this gear would result in reduced smooth dogfish landings. The ecological impacts of this are unknown since a stock assessment has not been conducted for this species.

This alternative could have a significant negative social and economic impact, and would have a considerable impact on the total landings per year of SCS. On average, directed shark permit holders landed 289,546 lb dw of SCS with gillnet gear. Alternative B2 would equate to approximately $365,955 in lost total SCS annual gross revenues for directed shark fishermen. On average, incidental shark permit holders landed 9,465 lb dw of SCS with gillnet gear per year. This alternative would equate to approximately $11,973 in lost SCS revenues for incidental shark fishermen. Overall, this represents a 45-percent reduction in SCS revenues for directed shark fishermen and a 46-percent reduction in SCS revenues for incidental shark fishermen compared to alternative B1. This alternative would have minimal negative social and economic impacts on the LCS fishery as most LCS are landed with BLL gear.

Gillnets are also the primary gear type used to catch smooth dogfish. As such, removal of this gear type in alternative B2 in combination with adding smooth dogfish under NMFS management (alternative F2) could have large impacts on the smooth dogfish fishery. Because the smooth dogfish fishery is not Federally managed and there are no permitting or reporting requirements, NMFS cannot estimate the specific impact of closing this fishery. Using vessel trip report (VTR) data (primarily a northeast reporting system), an average of 213 vessels reported smooth dogfish landings per year between 2004 and 2007. Within the Coastal Fisheries Logbooks data (primarily a southeast reporting system), an average of 10 vessels reported smooth dogfish landings per year between 2004 and 2007. As such, NMFS estimates approximately 223 vessels catch and land smooth dogfish. However, as fishermen are currently not required to have a permit to retain smooth dogfish, this could be an underestimate. The landings data indicate that total landings from 1998–2007 averaged 950,859 lb dw per year, which equates to total annual gross revenues of approximately $357,286. This total annual gross revenue, which could be an underestimate, would be lost if NMFS prefers both alternative B2 and alternative F2.

Given the potential large negative social and economic impacts of alternative B2 to the SCS and LCS fisheries, and given the potentially large impacts to the smooth dogfish fishery, NMFS does not prefer this alternative at this time.

C. Pelagic Shark Commercial Effort Controls

NMFS also considered several alternatives to end overfishing of shortfin mako sharks ranging from no action to a minimum size to establishing a species-specific quota. Specifically, the alternatives considered are: alternative C1—no action, keep shortfin mako sharks in the pelagic shark species complex and maintain the quota; alternative C2—remove shortfin mako sharks from pelagic shark species quota and establish a shortfin mako quota; alternative C3—remove shortfin mako sharks from pelagic shark species quota and place this species on the prohibited shark species list; alternative C4 —establish a commercial size limit for shortfin mako sharks; alternative C5—take action at the international level to end overfishing of shortfin mako sharks; and alternative C6—promote the release of shortfin mako sharks brought to fishing vessels alive. Alternative C4 includes two sub-alternatives: alternative C4a—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 108 inches FL (274 cm FL) and alternative C4b—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 73 inches FL (185.4 cm FL). Alternatives C5 and C6 are the preferred alternatives.

Under alternative C5, which is one of the preferred alternatives, NMFS would take action under Section 304(i) of the Magnuson-Stevens Act. Section 304(i) provides for the Secretary to take immediate action to end overfishing at the international level and to develop both domestic and international recommendations for conservation and management. ICCAT assumes three shortfin mako shark stocks for assessment purposes: northern and southern Atlantic stocks, separated at 5° N latitude, and a Mediterranean stock. Based on the 2008 SCRS stock assessment on the North Atlantic shortfin mako stock, NMFS determined domestically that the North Atlantic stock of shortfin mako sharks is experiencing overfishing and approaching an overfished status.

Most shortfin mako shark landings are attributable to the recreational fishery. Recreational catches peaked in 1985 at about 80,000 fish, and ranged from less than 1,400 fish to over 31,000 fish in the remaining years. Shortfin mako sharks are also caught incidentally in the PLL fishery; fishermen generally do not target shortfin mako sharks in the

United States where shortfin mako sharks are caught incidentally in tuna and swordfish fisheries. Shortfin mako shark commercial landings have not exceeded 11,000 fish according to available estimates. Pelagic longline discards of shortfin mako sharks are generally negligible since the meat of this species is highly valued. Total commercial and recreational catches ranged from about 5,600 fish in 1998 to almost 80,000 fish in 1985, when recreational catches peaked.

U.S. commercial harvest of Atlantic shortfin mako sharks has historically been less than ten percent of the recorded total international landings, based on ICCAT data from 1997 through 2007. Because of the small U.S. contribution to Atlantic shortfin mako shark mortality, domestic reductions on shortfin mako shark mortality would not end overfishing of the entire North Atlantic stock. For instance, there are domestic regulations in place for shortfin mako sharks, such as a commercial quota, incidental shark trip limits, a fins-attached requirement, and recreational size and bag limits. However, implementing additional regulations in the United States only would not end overfishing of shortfin mako sharks. Therefore, NMFS believes that ending overfishing and preventing an overfished status would be better accomplished through the procedures set forth in Section 304(i) of the Magnuson-Stevens Act. The United States would continue to manage its relative impact on shortfin mako domestically by maintaining existing quota and promoting live release in concert with Alternative C6, while taking immediate action at the international level to end overfishing. It would develop international recommendations and present them to international fisheries organizations, such as ICCAT, where other countries that have large takes of shortfin mako sharks could participate in shortfin mako shark mortality reductions. These recommendations would also be provided to Congress to raise its awareness of the need for international action. In the short term, this alternative would not result in any negative economic or social impacts on commercial fishermen as it would not restrict the retention of shortfin mako sharks, nor alter the pelagic shark quota. While this alternative would have neutral ecological impacts for shortfin mako sharks in the short term, any management recommendations to reduce mortality of shortfin mako sharks could have positive ecological impacts on shortfin mako sharks in the long term. The long term socioeconomic impacts cannot be estimated without knowing the potential management recommendations. NMFS expects in the long term that alternative C5 would render larger benefits to the species because other nations would help reduce overall mortality of the species.

Under Alternative C6, the second preferred alternative in this section, NMFS would promote the live release of shortfin mako sharks in the commercial shark fishery. This alternative could have slight positive or neutral ecological benefits for shortfin mako sharks because 69 percent are brought to the vessel alive and could be released. This action does not restrict commercial harvest and landing of shortfin mako sharks that are alive at haulback, and therefore, would have no adverse social or economic impacts. If promoting live release is successful, it could reduce landings and dead discards of shortfin mako. Because this alternative could have positive ecological impacts with minimal social and economic impacts, NMFS is preferring this alternative at this time.

Alternative C1 is the no action alternative and would maintain the existing regulations for shortfin mako sharks. The current commercial quota for common thresher, oceanic whitetip, and shortfin mako sharks is 488 mt dw. This alternative would likely maintain fishing mortality of shortfin mako sharks at current levels, and therefore, could have negative ecological impacts based on the 2008 ICCAT stock assessment. From 2004 to 2007, the average annual commercial shortfin mako shark landings were 72.5 mt dw. However, the existing 488 mt dw commercial quota for shortfin mako, common thresher, and oceanic whitetip sharks has not been reached to date and could allow landings of shortfin mako to increase.

Alternative C1 would likely not result in any adverse economic or social impacts as the no action alternative would not substantially modify or alter commercial fishing practices for shortfin mako sharks or other shark species. Based on the average landings from 2004—2007 and an ex-vessel price per pound of $1.59, shortfin mako shark landings are worth approximately $254,135 in annual gross revenues. However, as stated above, landings could increase. If the landings of shortfin mako sharks continue at current levels or increase, this could lead to further overfishing, negative ecological impacts, and potentially to the stock being overfished. Therefore, NMFS does not prefer alternative C1 at this time.

Alternative C2 would remove shortfin mako sharks from the pelagic shark species quota, and would establish a species-specific quota for shortfin mako sharks based on U.S. landings. Currently, the annual quota for common thresher, oceanic whitetip, and shortfin mako is 488 mt dw. Based on the average commercial landings of shortfin mako sharks from 2004–2007, the species-specific quota for shortfin mako sharks would be 72.5 mt dw. The common thresher and oceanic whitetip sharks would be allocated a quota of 415.5 mt dw after removal of the shortfin mako quota of 72.5 mt dw (488 mt dw − 72.5 mt dw = 415.5 mt dw). Removing shortfin mako sharks from this group of pelagic sharks would allow them to be managed separately and would give NMFS the ability to track shortfin mako landings more efficiently and would cap overall shortfin mako landings at the current landings level. The 2008 ICCAT stock assessment did not recommend a TAC. Therefore, it is difficult to determine if setting a species-specific quota for shortfin mako sharks at the level of current U.S. commercial landings would have positive ecological benefits for the stock. However, setting a quota of 72.5 mt dw would maintain fishing mortality at current levels and prevent commercial landings from increasing, which may provide more ecological benefits than maintaining the quota at 488 mt dw for common thresher, oceanic whitetip, and shortfin mako sharks. Because there are no current stock assessments for oceanic whitetip or common thresher, it is difficult to determine the ecological impacts of setting a quota of 415.5 mt dw for these two species. Current average commercial landings from 2004 to 2007 for common thresher and oceanic whitetip combined, were 17.5 mt dw. It is not expected that the level of fishing effort or mortality would increase under this alternative and, therefore, alternative C2 would likely have neutral ecological impacts for common thresher and oceanic whitetip sharks.

Alternative C2 would have neutral or slightly negative socioeconomic impacts. On average, 72.5 mt dw of shortfin mako sharks was commercially landed between 2004 and 2007. Based on an ex-vessel price per pound of $1.59, this is equivalent to $254,135 in annual gross revenues. While fishermen would be able to maintain current fishing effort under this alternative, any increase in effort would be restricted by the species-specific quota of 72.5 mt dw. Thus, if the quota is reduced to 72.5 mt dw, which equals $254,135 in average

annual gross revenues, this could potentially result in a loss of average annual gross revenues of $1,456,458 for commercial fishermen if the entire 488 mt dw pelagic shark quota were landed as shortfin mako sharks. However, it is unlikely that 488 mt dw of shortfin mako would be landed as shortfin mako is an incidental catch in the PLL fishery. Therefore, this alternative could result in neutral or slightly negative socioeconomic impacts for commercial fishermen. NMFS does not prefer this alternative at this time because the United States contributes a small portion of the overall shortfin mako mortality in the North Atlantic, the 2008 stock assessment did not recommend a TAC for this species, and ICCAT has not set a species-specific quota for shortfin mako sharks.

Alternative C3 would add shortfin mako sharks to the prohibited species list. Adding shortfin mako sharks to the prohibited species list would make it illegal to retain and land shortfin mako sharks commercially or recreationally. Shark species can be added to the prohibited species list if two of the following four criteria are met: (1) There is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries; (3) the species is not commonly encountered or observed caught as bycatch in fishing operations; or (4) the species is difficult to distinguish from other prohibited species (*i.e.,* look-alike issue). Shortfin mako could meet criteria (1) and (4). NMFS determined that shortfin mako sharks were experiencing overfishing based on the 2008 ICCAT stock assessment. In addition, shortfin mako sharks look similar to other sharks on the prohibited species list (*i.e.,* white and longfin mako sharks). This alternative would likely have neutral or slightly positive ecological impacts for this stock. Average commercial landings of shortfin mako sharks from 2004 to 2007 were 72.5 mt dw, and were well below the 488 mt dw quota as they are primarily caught as incidental catch in the PLL fishery, and there is no directed commercial fishery for this species. In addition, the United States does not contribute a significant proportion of Atlantic-wide fishing mortality of shortfin mako sharks. According to observer reports from 1992–2006, 68.9 percent of shortfin mako sharks are brought to the vessel alive and 30.1 percent come to the vessel dead. Also, of the shortfin mako sharks that are caught, 61 percent are kept, 22 percent are discarded alive, and 10 percent are discarded dead. Although prohibiting the retention of shortfin mako sharks may have more positive ecological impacts for this stock than alternative C2, this alternative could also result in a slight increase of dead discards.

Alternative C3 would have negative economic impacts for commercial fishermen because, even though it is not a species that is targeted by commercial fishermen, when it is caught, it is often kept due to its high value and suitability for consumption relative to other shark species. Based on an ex-vessel price of $1.59 per lb, PLL fishermen make approximately $254,135 in annual gross revenues from shortfin mako sharks. If shortfin mako sharks were added to the prohibited species list, fishermen would no longer be able to land shortfin mako sharks and would therefore lose the associated shortfin mako shark revenue. This alternative could also lead to increased operation time if commercial fishermen have to release and discard all shortfin makos that are caught on PLL gear. In addition, if the commercial PLL fleet expands in the future, placing shortfin mako sharks on the prohibited species list could result in a loss of future revenues for the commercial PLL fishery. Although prohibiting the retention of shortfin mako sharks may have more positive ecological impacts for this stock than alternative C2, this alternative could also result in increased dead discards. Therefore, NMFS does not prefer alternative C3 at this time.

Alternative C4 would establish a commercial size limit for shortfin mako sharks. Currently, there is no commercial size limit for shortfin mako sharks; therefore, establishing a size limit would result in varying degrees of ecological and economic impacts. The DEIS examines two size limits for shortfin mako sharks, one based on the size of sexual maturity of females (alternative C4a—108 inches FL or 274 cm FL) and one based on the size of sexual maturity of males (alternative C4b—73 inches FL or 185.4 cm FL). Because shortfin mako sharks are dressed at sea by the commercial fleet, a minimum FL measurement would be ineffective in enforcing a size limit. Therefore, an interdorsal length (IDL) measurement (the straight line measurement from the base of the trailing edge of the first dorsal fin to the base of the leading edge of the second dorsal fin) would be utilized.

NMFS analyzed both the PLL observer program (POP) data and the HMS logbook data to determine the percentage of shortfin mako sharks that are currently landed that would be released alive or dead if commercial size limits in alternatives C4a and C4b were implemented. The full analysis can be found in the DEIS. Because the commercial fishery harvests so many sharks above either size limit and so few sharks below the minimum size limits, NMFS believes that the size limits considered under these two sub-alternative would have minimal increases in the number of sharks released alive. NMFS also assumes that not all shortfin mako sharks that are kept are alive when reaching the vessel. Thus, imposing a size could lead to an increase in dead discards. It is important to note that because the shortfin mako sharks that would have been dead discards under alternative C4 would have been traditionally kept, no additional shortfin mako shark mortality would be associated with the increase in dead discards.

Alternatives C4a and C4b would both result in minor positive ecological impacts to the shortfin mako stock, as more shortfin mako sharks would be released alive than under the alternative C1. The positive impacts are less for C4b than for C4a because there are fewer shortfin mako sharks released alive under alternative C4a. Also, retention of immature female sharks would still be allowed in alternative C4b because the size limit would be set at the size at which 50 percent of all male shortfin mako sharks reach sexual maturity, which is lower than the size at which 50 percent of all female shortfin mako sharks reach sexual maturity. Alternative C4a would result in the live release of 84 more shortfin mako sharks per year than alternative C4b, and retention of immature females would be minimized because the size limit would equal the size at which 50 percent of all females reach sexual maturity.

Alternatives C4a and C4b would both have minimal economic impacts, because only a small percentage of commercial landings would be affected by the size restrictions. Under alternative C4a, NMFS estimates that the annual gross revenues lost from the sale of meat and fins of shortfin mako sharks would be $4,513. Under alternative C4b, NMFS estimates that the annual gross revenue loss to be approximately $75. Given the relatively small number of additional live releases of shortfin mako sharks under either alternative C4a or C4b, NMFS does not prefer either alternative at this time.

D. SCS Recreational Effort Controls

NMFS considered several alternatives regarding the SCS recreational fishery. Specifically, the alternatives considered

are: alternative D1—no action, maintain current recreational retention limit for SCS; alternative D2—modify the minimum recreational size (currently 54 inches FL or 137 cm FL) for blacknose sharks based on their biology and/or introduce a slot limit where smaller or larger individuals can be landed; alternative D3—increase the retention limit for Atlantic sharpnose sharks based on current catches; and alternative D4—prohibit retention of blacknose sharks in the recreational shark fisheries. Alternative D4 is the preferred alternative.

Under alternative D4, NMFS would prohibit the retention of blacknose sharks in the recreational shark fishery. Recreational fishermen would likely still catch blacknose sharks as they are fishing for other species, however, they would not be permitted to retain blacknose sharks and would have to release them. This alternative could have positive ecological impacts for the stock to the extent that recreational landings of blacknose sharks in Federal waters are reduced. Current regulations (alternative D1) prohibit landing any blacknose sharks that are under 54 inches FL (137 cm FL). Few, if any blacknose sharks reach that minimum size. As such, few blacknose sharks should be landed under the current regulations by Federally permitted anglers. To the extent that individual States mirror Federal regulations, blacknose shark recreational landings could also be reduced in State waters.

Given that current State recreational catch rates are approximately 6,958 blacknose sharks per year and total (Federal and State) blacknose shark recreational landings are approximately 10,360 blacknose per year, NMFS assumes that blacknose shark landings would be reduced by at least 3,403 blacknose sharks per year under alternative D4. However, in order to achieve the TAC, blacknose shark recreational landings would need to be reduced by 78 percent or to 2,280 blacknose sharks per year (*see* alternative D1). Thus, cooperation by individual States to prohibit the retention of blacknose sharks in State waters and the ASMFC would be essential to achieving the mortality reduction required to achieve the TAC recommended by the latest stock assessment to rebuild the blacknose shark stock.

Alternative D4 could have negative social and economic impacts on recreational fishermen, including tournaments and charter/headboats, if the prohibition of blacknose sharks resulted in fewer charters. However, since blacknose sharks are not one of the primary species targeted by recreational anglers in tournaments or on charters, NMFS does not anticipate large negative social and economic impacts from this preferred alternative in tournaments or in the charter/headboat sector.

The preferred alternative would reduce the number of blacknose sharks recreationally landed in Federal waters and would help to achieve the overall TAC of 19,200 blacknose sharks killed per year. The other alternatives to no action and modifying the minimum size limit (*see* below) would not achieve the reduction in mortality of blacknose sharks and reach the TAC recommendation. Also, increasing the retention limit of Atlantic sharpnose sharks could cause overfishing to occur under alternative D3. Thus, NMFS believes, at this time, that alternative D4, the preferred alternative, would be the best method to improve the status of the SCS species and rebuild blacknose sharks.

Under alternative D1, the no action alternative, NMFS would maintain the existing recreational retention limits for SCS. Recreational anglers are currently allowed one shark of any species per vessel per trip with a minimum size of 54 inches FL (137 cm FL). In addition, anglers are allowed one bonnethead shark and one Atlantic sharpnose shark per person per trip with no minimum size. Since there would be no change to the retention or size limits under alternative D1, the ecological impacts associated with this alternative would be neutral for Atlantic sharpnose, bonnethead, finetooth sharks, and many other species of shark as all species were not determined to be overfished and overfishing is not occurring. This alternative could have negative ecological impacts on blacknose sharks as blacknose sharks were determined to be overfished with overfishing occurring. Without reductions in current blacknose shark recreational landings, NMFS would not be able to achieve the TAC of 19,200 blacknose sharks per year recommended by the 2007 blacknose shark stock assessment. However, blacknose sharks rarely, if ever, reach 54 inches FL as a maximum size. As such, under current regulations, most blacknose sharks should not be landed in Federal waters. NMFS does not expect this alternative to have any negative social or economic impacts in the short-term. Since this alternative would not reduce blacknose shark recreational landings, NMFS does not prefer this alternative at this time.

Alternative D2 would modify the minimum recreational size for blacknose sharks based on their biology. The current minimum size is based on the size at which 50 percent of female sandbar sharks reach sexual maturity. A minimum size for blacknose sharks that corresponds to the size at which 50 percent of the female blacknose sharks reach sexual maturity is 3 ft FL (91.4 cm FL). Alternative D2 would lower the current minimum size for blacknose sharks and could lead to increased landings of blacknose sharks compared to the status quo. According to data from the Marine Recreational Fishing Statistics Survey (MRFSS), the average length of blacknose sharks landed by recreational anglers is less than 3 ft FL (91.4 cm FL). As such, this alternative would restrict landings to sexually mature fish and, thus, could have some ecological benefit if the average length of blacknose sharks landed increases as a result. However, this alternative could increase landings of blacknose sharks, contrary to the TAC recommended by the 2007 SCS stock assessment. Since decreasing the minimum size for blacknose sharks would likely result in increased landings of blacknose sharks, NMFS does not prefer this alternative at this time.

Alternative D3 would increase the retention limit for Atlantic sharpnose sharks based on their current catches and stock status. Based on the 2007 stock assessment for Atlantic sharpnose, the biomass for Atlantic sharpnose sharks is falling towards the maximum sustainable yield (B_{MSY}) threshold. While the stock is not currently overfished or experiencing overfishing, the latest stock assessment suggests that increasing fishing efforts, such as increasing the retention limit of Atlantic sharpnose sharks, could result in an overfished status and/or cause overfishing to occur in the future. Any increase in the retention limit for Atlantic sharpnose sharks would provide positive social and economic impacts, especially if this resulted in more charter trips for charter/headboats. However, since increasing the retention limit for Atlantic sharpnose sharks could result in increased fishing effort and result in negative ecological impacts for the stock, NMFS does not prefer this alternative at this time.

E. Pelagic Shark Recreational Effort Controls

NMFS considered similar alternatives for recreational pelagic shark measures to end overfishing of shortfin mako as were considered for commercial pelagic shark management measures. Specifically, the alternatives considered for pelagic sharks in the recreational fishery are: Alternative E1—no action, maintain the current recreational

measures for shortfin mako sharks; alternative E2—increase the recreational minimum size limit of shortfin mako sharks; alternative E3—take action at the international level to end overfishing of shortfin mako sharks; alternative E4—promote the release of shortfin mako sharks brought to fishing vessels alive; and alternative E5—prohibit landing of shortfin mako sharks in the recreational fishery (catch and release only). Alternative E2 has two sub-alternatives: alternative E2a—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 108 in FL and alternative E2b—establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 73 inches FL. Alternatives E3 and E4 are the preferred alternatives.

Under alternative E3, NMFS would take immediate action at the international level to develop binding management measures with other nation to end overfishing of shortfin mako sharks. As discussed under alternative C5, above, the recreational fishery contributes to most of the U.S. landings, and the United States contributes only a minor portion of the mortality for North Atlantic shortfin mako sharks. Therefore, NMFS believes that ending overfishing and preventing an overfished status would best be accomplished through international management measures established at international organizations such as ICCAT. While this alternative would have neutral ecological, social, and economic impacts for shortfin mako sharks in the short term, any management recommendations adopted at the international level to help protect shortfin mako sharks could have positive ecological impacts on shortfin mako sharks in the long term.

Under alternative E4, NMFS would promote the live release of shortfin mako sharks in the recreational shark fishery. This alternative would not result in any changes in the current recreational regulations regarding shortfin mako sharks. Recreational shark fishermen would still be able to retain one authorized shark species greater than 54 inches FL per vessel per trip, and one Atlantic sharpnose and one bonnethead shark per person per trip. While this alternative is expected to have neutral ecological impacts to the shortfin mako shark stock in the short term, NMFS would encourage the catch and release of live shortfin mako sharks. This alternative is also expected to have neutral social and economic impacts. If any management recommendations are adopted at the international level to help protect shortfin mako sharks under the preferred alternative E3, NMFS would implement those recommendations, which, in combination with alternative E4, could have positive ecological impacts on shortfin mako sharks in the long term.

Under alternative E1, the no action alternative, NMFS would maintain the current recreational shark fishing regulations that pertain to shortfin mako sharks established in the 2006 Consolidated HMS FMP. The current bag limit for HMS Angling and HMS Charter/Headboat permit holders is one authorized shark species greater than 54 inches FL (137 cm FL) per vessel per trip, and one Atlantic sharpnose and one bonnethead shark per person per trip. Alternative E1 would likely not result in any adverse economic or social impacts as the No Action alternative would not substantially modify or alter recreational fishing practices for shortfin mako sharks or other shark species. Alternative E1 would also not aid in ending overfishing. As such, NMFS does not prefer this alternative at this time.

Alternative E2 would increase the current recreational size limit for shortfin mako sharks. Currently, the recreational size limit for shortfin mako sharks is 54 inches FL (137 cm FL); therefore, increasing this size limit could result in varying degrees of ecological and economic impacts. NMFS analyzed two size limits for shortfin mako sharks, one based on the size of sexual maturity of females (alternative E2a—108 inches FL or 274 cm FL) and one based on the size of sexual maturity of males (alternative E2b—73 inches FL or 185.4 cm FL).

According to the LPS tournament data, 1.4 percent of shortfin mako sharks landed were below the current 54 inches FL minimum size, 100 percent were below the 108 inches FL size limit in alternative E2a, and 51 percent were below the 73 inches FL size limit in alternative E2b.

Based on non-tournament landings of shortfin mako sharks, 4 percent were below the current 54 inches FL minimum size, 98 percent were under the 108 inches FL minimum size in alternative E2a, and 81 percent were under the 73 inches minimum size under alternative E2b. Positive ecological impacts are estimated for both alternatives E2a and E2b, as both alternatives could lead to a large proportion of the recreationally caught shortfin mako sharks being released alive (99.5 and 81 percent, respectively). Alternative E2a would release 65 percent more shortfin mako sharks alive than alternative E2b (3,664 to 2,220 sharks, respectively). Alternative E2a would also have the most severe economic impacts, as almost all of the shortfin mako sharks reported landed (99.5 percent) were smaller than the 108 inches FL (274.3 cm FL) size limit and, therefore, would have to be released. This alternative would basically create a catch and release fishery for shortfin mako sharks. The impacts of alternative E2b would be less severe than alternative E2a, but would result in a 60 percent overall reduction in recreational shortfin mako shark landings. Under alternative E2b, the economic impacts would be greater on the non-tournament recreational mako shark fishery, as 81 percent of those landings would fall below the 73 inches FL size limit. According to LPS data, 41 percent of shortfin mako sharks caught are kept; therefore, the size limits considered in alternatives E2 could have a substantial economic impact on the recreational fishery. Given this and the need for international cooperation in ending overfishing of shortfin mako sharks, NMFS is not preferring either alternative E2a or E2b at this time.

Alternative E5 would prohibit the landings of shortfin mako sharks in the recreational fishery by placing shortfin mako sharks on the prohibited species list. Placing shortfin mako sharks on the prohibited species list would make the recreational fishery a catch and release fishery for this species. As described above under alternative C3, shark species can only be added to the prohibited species list if they meet two of four specific criteria. Shortfin mako sharks meet two of those criteria. According to recreational landings data, on average 3,682 shortfin mako sharks were landed from 2004 to 2007. Because of the number of shortfin mako sharks taken in the recreational fishery is small relative to the number of shortfin mako sharks taken by other countries, placing this species on the prohibited species list is likely to have neutral or slightly positive ecological impacts. In the United States, shortfin mako sharks are an important fishing tournament species. In 2007, there were 42 shark tournaments throughout the U.S. Atlantic Coast, including the Gulf of Mexico and the Caribbean. Therefore, adding this species to the prohibited species list could lead to negative socioeconomic impacts for recreational fishermen, including those who participate in recreational shark tournaments, who would no longer be able to retain this species during recreational fishing or tournaments.

Given this and the need for international cooperation in ending overfishing of shortfin mako sharks, NMFS is not preferring alternative E5 at this time.

F. The Addition of Smooth Dogfish Under NMFS Management

NMFS currently manages four shark management units (small coastal sharks, pelagic sharks, large coastal sharks, and prohibited species). There are additional species of sharks that fall outside of the current management units but remain under Secretarial authority should the Secretary determine the species is in need of conservation and management. One of these species, smooth dogfish, is not currently managed at the Federal level. The Magnuson-Stevens Act tasks the Secretary of Commerce with regulating oceanic shark species within the U.S. EEZ. NMFS has determined that smooth dogfish is an oceanic shark species. The lack of previous management measures for this species complicates new regulations due to a lack of data regarding landings, fishing effort, or participants in the fishery. Due to increasing concerns regarding the lack of management of smooth dogfish along with the addition of smooth dogfish to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Coastal Shark FMP, NMFS is considering several alternatives regarding smooth dogfish. In addition, any management measures implemented for smooth dogfish would also apply to Florida smoothhounds (*Mustelus norrisi*). Emerging molecular and morphological research has determined that Florida smoothhounds have been misclassified as a separate species from smooth dogfish (Jones, pers. comm.). Because of this taxonomic correction, Florida smoothhounds would be considered smooth dogfish and would fall under all smooth dogfish management measures, such as permit requirements and quotas. Specifically, the alternatives considered for smooth dogfish are: Alternative F1—no action, do not add smooth dogfish under NMFS management; alternative F2—add smooth dogfish under NMFS management and develop management measures, such as a Federal permit requirement and establishment of a commercial quota; and alternative F3—add smooth dogfish under NMFS management and mirror management measures implemented in the ASMFC Interstate Coastal Shark FMP. Alternative F2 is the preferred alternative. Under alternative F2, there are also several sub-alternatives: alternative F2a1—establish a smooth dogfish quota that is equal to the average annual landings from 1998–2007 (950,859 lb dw); alternative F2a2 -establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 (1,270,137 lb dw); alternative F2a3—establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 plus one standard deviation (1,423,727 lb dw); alternative F2b1—establish a separate smooth dogfish set-aside quota for the exempted fishing program (6 mt ww); and alternative F2b2—establish a smooth dogfish set-aside quota for the exempted fishing program and add it to the current 60 mt ww set-aside quota for the exempted fishing program (66 mt ww). Alternatives F2 and sub-alternatives F2a3 and F2b1 are the preferred alternatives.

Smooth dogfish are currently not managed by NMFS and stock data is sparse. From 1999 through 2003, NMFS included smooth dogfish under NMFS management in order to prevent finning; no other management measures were implemented. Given this lack of management, there is a lack of stock status information, participant information, and effort data. This lack of data complicates the ecological impact analysis of the alternatives for smooth dogfish. Alternatives F2 and F3 would both establish Federal management measures and alternative F2 would begin, through dealer reports and a Federal permit requirement, data collection of smooth dogfish catch and effort data.

Alternative F2, the preferred alternative, would implement Federal management of smooth dogfish and establish a permit requirement for commercial and recreational retention of smooth dogfish in Federal waters. Commercial fishermen would be required to obtain a new open-access commercial smooth dogfish permit in order to retain smooth dogfish in Federal waters. Recreational fishermen would be required to obtain an existing Federal HMS recreational fishing permit in order to retain smooth dogfish in Federal waters, and Federal shark dealers would be required to obtain an existing Federal shark permit in order to purchase smooth dogfish from Federally-permitted commercial shark fishermen. This alternative would also require that all fins be naturally attached, and that Federally permitted dealers report landings of smooth dogfish as is required for other shark species. This alternative would also provide NMFS the ability to select vessels to carry an observer. These management measures would focus on characterizing the fishery and are not intended to actively change catch levels or rates. This alternative would not, at this time, create any new requirement for fishermen to report landings. Rather, NMFS would collect landings information through Federal dealers. Over time, NMFS may implement logbook or other reporting for smooth dogfish fishermen, as needed. NMFS would not do this, however, until the universe of fishermen is known and until NMFS can determine the appropriate mechanism of reporting without duplicating current reporting requirements. Despite the lack of management, many fishermen in the mid-Atlantic region have been reporting their landings. Some of these fishermen have Federal permits for other species and are required to report all landings, including smooth dogfish, due to the regulations in those other fisheries. Other fishermen do not have Federal permits and report smooth dogfish landings voluntarily. These landings and the number of vessels reporting these landings have remained fairly constant since the late 1990s. Similarly, at this time, this alternative would not require fishermen to attend the protected species release, disentanglement, and identification workshops. As NMFS gathers information about the fishery and the fishermen, NMFS may require fishermen attend these workshops as is required in other HMS longline and gillnet fisheries if appropriate. Accordingly, NMFS does not expect alternative F2 to have significant positive or negative ecological impacts, except that commercial fishermen would have to purchase an open access smooth dogfish commercial fishing permit, dealers would be required to report smooth dogfish on HMS dealer reports or through the Standard Atlantic Fisheries Information System (SAFIS), and recreational fishermen would need to purchase the appropriate HMS Angling or Charter/Headboat permit. In the future, data that comes from the measures in this alternative could support effort restrictions if the stock is deemed to be overfished and/or have overfishing occurring. If a Federal permitting system creates enough of an inconvenience as to reduce the number of participants in the fishery, reduced effort would likely result in positive ecological impacts.

Gillnets are the primary gear type in the smooth dogfish fishery and if the fishery is brought under Federal management, fishermen using gillnets to target smooth dogfish would continue to be required to comply with Federal marine mammal take reduction programs mandated in the Marine

Mammal Protection Act at 50 CFR 229.32. Positive ecological impacts are expected from this compliance due to a decreased risk of marine mammal interactions with smooth dogfish gillnets. Fishermen would also be required to attach their gillnet to their vessel and perform net checks at least every two hours (the net can be detached from the vessel during net checks).

As described above, on January 16, 2009, NMFS published NSG1 for implementing the annual catch limit (ACL) and accountability measures (AM) requirements of the Magnuson-Stevens Act (74 FR 3178). As such, if NMFS adds smooth dogfish under NMFS management, NMFS must also establish an ACL and AMs for the fishery. The five sub-alternatives under alternative F2 address this issue by examining possible overall quota levels and set-aside quota levels for the smooth dogfish fishery. NMFS will use the process as outlined above to establish ACLs and AMs for the smooth dogfish fishery. Each sub-alternative aims for minimal disruption with the current level of utilization and is not expected to have any additional ecological impacts beyond those for Alternative F2.

While data regarding stock status and participants in the fishery is sparse, a number of sources exist that summarize any reports of smooth dogfish catches. These sources, particularly the Atlantic Cooperative Catch Statistical Program (ACCSP) for commercial catches and the Marine Recreational Fishing Statistics Survey (MRFSS) for recreational catches, offer insight into the current state of the fishery. A third source, NMFS Office of Science and Technology's (S&T) Annual Commercial Landings Statistics, available on the S&T Web page, is also available, however, this system only contains non-confidential landings data and does not report any confidential data. For this reason, ACCSP data was used instead of S&T data for analysis, and NMFS has determined that these are the best available data at this time. Based on ACCSP data, in the commercial fishery, an average of 1,321,695 lb whole weight (ww) of smooth dogfish were retained per year. Of this whole weight, 950,860 lbs of dressed weight (dw) fish and 47,543 lb of fins would be available for sale (using a conversion of 1.39 for ww to dw, and 5 percent of dw for shark fins). Using the median ex-vessel price of these products between 2004 and 2007 ($0.29 for smooth dogfish flesh and $2.02 for smooth dogfish fins), the fishery averaged $371,786 in value per year. Utilizing VTR and Coastal Logbook data between 2004 and 2007, NMFS estimates that approximately 223 commercial vessels would likely require a smooth dogfish permit.

In the recreational fishery, based on MRFSS data from 2004 to 2007, an average of 58,161 smooth dogfish were retained per year out of a total annual average of 177,456,965 for all finfish in the Atlantic and Gulf of Mexico. NMFS has determined that the MRFSS data are the best available data on the recreational smooth dogfish fishery at this time. Implementing Federal management of smooth dogfish through alternative F2 would focus on characterizing the fishery, and would not actively change catch levels or rates. Therefore, alternative F2 would likely not have significant positive or negative social or economic impacts. Based on MRFSS data from 2004 to 2007, an average of 58,161 smooth dogfish were retained per year in the recreational fishery. This number is likely the upper limit of participants in the Federal recreational fishery of the species, and is likely lower since multiple individual fish are expected to have been caught by one fisherman. Furthermore, based on the life history of the species and the fact the most recreational fisherman are shore-based, the vast majority of smooth dogfish caught recreationally are in coastal, State waters and would not require a Federal HMS Angling category permit. Of those that fish in Federal waters, the nominal fee of $16.00 for a recreational HMS Angling category permit is not expected to create an impediment to entering or remaining in the fishery.

Based upon mandates in the Magnuson-Stevens Act to manage sharks and the desire to fully characterize the fishery, NMFS prefers the alternative to add smooth dogfish under NMFS management and implement a Federal permit requirement. NMFS also prefers a quota equal to the maximum annual landings plus one standard deviation between the years 1998 and 2007. This quota would allow the fishery to operate as it has under the status quo. The set-aside quota of 6 mt ww, alternative F2b1, would allow for continued research on the species as well as some limited collection for public display. Ecological and socioeconomic impacts are expected to be minimal since no restrictions would be placed on the fishery beyond a Federal permit. Fees associated with the permit would be minimal and are not expected to create any impediment to entering or remaining in the fishery.

The alternative F1, no action, would not likely have any ecological impacts beyond the status quo. Inherent in the no action alternative, however, is a continued lack of data regarding numbers of participants in the fishery, and catch and effort information that could be used to determine stock status for smooth dogfish. If current fishing effort is putting too much pressure on the stock, negative ecological impacts could persist but continue to go undocumented. Alternative F1 would likely not have any new social or economic impacts beyond the status quo, as no action would be taken. Any potential impacts, however, would be either neutral or negative. If, in the absence of catch and effort data, the stock is undergoing excessive fishing pressure, future stock declines would likely have negative social and economic impacts. Alternatively, if the stock is, in actuality, underutilized, missed harvest potential could result.

Alternative F3 would also implement Federal management of the species, however, NMFS management measures would mirror and/or complement, to the extent practicable, ASMFC measures. NMFS is cognizant of differences in mandates and missions between itself and ASMFC. Current ASMFC regulations in the Interstate Fishery Management Plan for Atlantic Coastal Sharks include smooth dogfish commercial measures. There are no minimum size limits and no commercial possession limits in the fishery, but recreational fishermen are limited to a maximum of two smooth dogfish per day (one Federally-permitted shark species or smooth dogfish plus one additional Atlantic sharpnose, one additional bonnethead, and one additional smooth dogfish). Smooth dogfish must have tails and fins naturally attached through offloading, and gillnet gear must be checked at least every two hours to minimize protected species impacts.

ASMFC is currently amending the management measures for smooth dogfish. Specifically, ASMFC is considering an exception for smooth dogfish to allow at-sea processing (*i.e.,* removal of shark fins while still onboard a fishing vessel), removal of recreational retention limits for smooth dogfish, and removal of the two hour net-check requirement for shark gillnets. The at-sea processing would require a 5 percent fin-to-carcass ratio and allow for the removal of fins. As such, it is difficult to assess the specific impacts of this alternative. It is reasonable, though, to assume that any ecological impacts will either be neutral or positive. At this time, NMFS is not preferring alternative F3 for several reasons. First, ASMFC is considering removing the fins attached

requirement for smooth dogfish. NMFS recently implemented the fins attached regulation for all Atlantic sharks for enforcement and species identification reasons and would not want to open a loophole that would hinder enforcement. Additionally, both the House of Representatives and the Senate are reviewing bills that, if approved and signed by the President, would apply the fins attached requirement to all sharks in Federal waters. Second, ASMFC has not established a quota for the smooth dogfish fishery. As noted above, NMFS is required to establish ACLs and AMs under the Magnuson-Stevens Act. Third, ASMFC has not established a permitting requirement. NMFS believes that permitting is the first step to gaining information about the fishery. Thus, NMFS is not preferring to mirror the ASMFC regulations at this time. Nonetheless, if NMFS implements alternative F2, NMFS would continue to work with ASMFC to ensure Federal and State regulations are consistent to the extent practicable.

Administrative Actions to 50 CFR Part 229

NMFS also regulates the Southeastern U.S. Atlantic shark gillnet fishery under Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations at 50 CFR part 229. The ALWTRP regulations allow shark gillnet fishing, under certain circumstances, in the Southeast U.S. Restricted Area, Other Southeast Gillnet Waters Area, and the Southeast U.S. Monitoring Area. Certain provisions of this rule would entirely eliminate the shark gillnet fishery in South Carolina and south. Therefore, to avoid regulatory conflicts, NMFS proposes to remove exemptions for shark gillnet fishing at 50 CFR 229.2, 229.3 and 229.32 that would otherwise be prohibited by these proposed changes.

1. *Section 229.2.* NMFS is deleting the definition of ''spotter plane'', which only pertains to the Southeastern U.S. Atlantic shark gillnet fishery.

2. *Section 229.3(l).* NMFS is removing exemptions for shark gillnet fishing, which applies to regulated waters south of South Carolina.

3. *Section 229.32(a), (b), (f), (g), and (h).* NMFS is updating the ALWTRP regulations to reflect parts of this action which would prohibit the use of gillnet gear to harvest sharks from South Carolina and south.

Administrative Actions to 50 CFR Part 635

In addition to the alternatives analyzed in the DEIS and described above, NMFS is also proposing some administrative actions to clarify, correct, and update the existing regulations. None of these administrative actions are expected to have any economic, social, or ecological impacts.

1. *Section 635.5(b).* Since implementation of Amendment 2 to the 2006 Consolidated HMS FMP, NMFS has received several questions about the changes to dealer reports for shark fin and meat information. As such, NMFS proposes clarifications to its intent.

2. *Section 635.20(e).* The regulations regarding the recreational retention limit for sharks need to be clarified. As such, NMFS is proposing modified language to clarify that only one shark per vessel per trip can be taken along with one bonnethead and one Atlantic sharpnose shark per person per trip.

3. *Section 635.21(d).* In Amendment 2 to the Consolidated HMS FMP, NMFS implemented several closures per the request of the South Atlantic Fishery Management Council (SAFMC). The name of one of those areas did not match the name that the SAFMC finalized. As such, NMFS is proposing to rename ''South Carolina A'' as ''Northern South Carolina.''

4. *Section 635.27(b).* In Amendment 2 to the Consolidated HMS FMP, NMFS stated that it would review the allocation of exempted fishing permits for research on dusky sharks on a case by case basis. The regulations did not match this intent. NMFS is proposing new language to match this intent.

5. *Section 635.30(c).* For numerous years, NMFS has required that sharks be maintained intact (*i.e.,* not filleted or otherwise processed) while onboard a vessel. Additional language is needed to clarify that sharks that are processed as bait may not be possessed aboard a vessel issued a Federal commercial shark permit even if the shark was landed before being processed. Additionally, clarification is needed on what the word ''intact'' means in regarding to possession of sharks at sea. As such, NMFS is proposing removing the word ''intact'' and describing it instead.

6. *Section 635.32(e).* NMFS is updating a reference from the previous Billfish and Tunas, Swordfish, and Shark FMPs to the current 2006 Consolidated HMS FMP.

7. *Section 635.69(a)(3).* Additional language is needed to clarify the regulations regarding Vessel Monitoring System (VMS) requirements for holders of a shark Limited Access Permit (LAP). As such, NMFS is proposing to specify the right whale calving season as from November 15—April 15.

8. *Table 1 of Appendix A.* In addition to adding smooth dogfish to this list of managed species, NMFS is also updating the species names to match the most recent scientific naming determinations.

Request for Comments

NMFS is requesting comments on any of the alternatives or analyses described in this proposed rule and in the draft Amendment 3. NMFS is also requesting comments on specific items related to those alternatives to clarify certain sections of the regulatory text or in analyzing potential impacts of the alternatives. Specifically, NMFS requests comments on:

1. *Landings information used to calculate the commercial quota for the smooth dogfish fishery.* NMFS is proposing to establish the quota at one standard deviation above the maximum landings. Will this be high enough to encompass all current landings?

2. *Landings information used to calculate the smooth dogfish quota for EFPs, SRPs, and display permits.* NMFS is proposing to establish the quota for EFPs, SRPs, and display permits for smooth dogfish at 6 mt ww (4.3 mt dw). Will this be high enough to encompass all current scientific and display landings? Is there specific research that NMFS should review when establishing the EFP, SRP, and display permit quota?

3. *The data used to identify and describe essential fish habitat for smooth dogfish.* By adding smooth dogfish under NMFS management, NMFS is required to identify and describe essential fish habitat. The data and resulting identification and description are described in Chapter 11 of the DEIS. Are there additional data available that NMFS should consider?

4. *The number of vessels participating in the smooth dogfish fishery.* In reviewing the available data, NMFS estimates that approximately 223 vessels have reported landing smooth dogfish in recent years. Are there additional vessels that would not be included in the data NMFS used?

5. *The boundary for the use of gillnets.* NMFS is proposing that fishing for or possessing sharks when gillnet gear is on board be prohibited from South Carolina south including the Gulf of Mexico and Caribbean Sea. NMFS believes that north of this border represents an area where most blacknose sharks are no longer caught in gillnet gear and most smooth dogfish begin to be caught in gillnet gear. Additionally, the ALWTRP already prohibits or greatly restricts fishing with gillnet for sharks with webbing of 5 inches or greater in the Southeast U.S.

Restricted Area waters from Florida up to the South Carolina-North Carolina border, from November 15 through April 15. Therefore, we propose to establish the closure's northern boundary at the South Carolina-North Carolina border. Is the boundary appropriate? Does the proposal match blacknose and smooth dogfish catches?

6. *The VMS requirement for shark gillnet vessels.* In Amendment 1 to the Atlantic Tunas, Swordfish, and Shark FMP, NMFS implemented a requirement that stated that any gillnet vessel with a shark limited access permit, regardless of its location, needed to have a VMS unit installed and operating during right whale calving season. This requirement was put in place to protect right whales, specifically right whales calving off the east coast of Florida between November and March of each year. By maintaining this requirement, fishermen who keep their shark permits and use gillnet gear to fish for other species would still be required to maintain an operating VMS unit on their vessel. This requirement could still provide NMFS with information to help protect right whales and may provide additional information that may be used to end overfishing of blacknose sharks. However, if NMFS maintains this requirement, it might also require smooth dogfish fishermen who do not have VMS currently to obtain and operate a working VMS unit. Are there other reasons why the VMS requirement should remain in place? Are there reasons why the VMS requirement should be removed? Should smooth dogfish fishermen be required to comply with this requirement?

7. *The requirement to tend gillnet gear for smooth dogfish fishermen.* The current regulations require that gillnet gear, including sink net gear, remain attached to the vessel. The regulations also state that net checks be conducted at least once every two hours in order to release protected species and/or prohibited sharks. At this time, NMFS is proposing that this requirement apply to smooth dogfish fishermen as well. NMFS has heard, however, that most smooth dogfish fishermen leave their gear untended. What would be the consequences of requiring smooth dogfish gillnet gear be tended?

8. *Size and retention limits for recreational smooth dogfish fishermen.* Under the proposed regulations, recreational fishermen fishing for and landing smooth dogfish would not be restricted by a size or retention limit. This is different than what is required for most sharks (one shark per vessel per trip with a minimum size of 54 inches FL) and is different than what is required for Atlantic sharpnose and bonnethead (one shark per person per trip with no minimum size). If NMFS were to establish a size and/or retention limit for smooth dogfish, what would an appropriate size and/or retention limit be?

9. *Allowing smooth dogfish to be retained in trawl gear.* Under the proposed regulations, fishermen that possess a Federal Atlantic commercial shark permit would not be allowed to retain any smooth dogfish caught in trawl gear as trawl gear is not an authorized gear type for any Atlantic shark. However, NMFS is aware that some smooth dogfish landings in trawl gear have been reported in the Northeast region. In addition, NMFS has authorized an allowance for swordfish to be retained in squid trawls under § 635.24(b)(2). Should NMFS create an allowance for smooth dogfish to be retained when caught with trawl gear? If so, what should that allowance be and how should it work?

Comments may be submitted via writing, e-mail, fax, or phone (*see* **ADDRESSES**). Comments may also be submitted at a public hearing (*see* Public Hearings and Special Accommodations below). All comments must be submitted no later than 5 p.m. on September 22, 2009.

Public Hearings and Special Accommodations

As listed in the table below, NMFS will hold nine public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule and the draft Amendment 3. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to LeAnn Southward Hogan at (301) 713–2347 at least 7 days prior to the hearing date. NMFS has requested time to present this proposed rule and the draft Amendment 3 to the five Atlantic Regional Fishery Management Councils and the Atlantic and Gulf States Marine Fisheries Commissions at their meetings during the public comment period. Please see their meeting notices for dates, times, and locations.

Date	Time	Hearing location	Hearing address
8/11/09	5–8 p.m.	Thomas B. Norton Library	221 West 19th Avenue, Gulf Shore, AL 36542.
8/17/09	5–8 p.m.	Manteo Town Hall	407 Budleigh Road, Manteo, NC 27954.
8/20/09	5–8 p.m.	Lower Cape Library	2600 Bayshore Road, Villas, NJ 08251.
8/31/09	3–6 p.m.	Gulf Beaches Public Library	200 Municipal Drive, Madeira Beach, FL 33708.
9/1/09	5–8 p.m.	Fort Pierce Library	101 Melody Lane, Fort Pierce, FL 34950.
9/9/09	2:30–5 p.m.	HMS Advisory Panel Meeting	Crowne Plaza, 8777 Georgia Avenue, Silver Spring, MD 20910.
9/16/09	6–9 p.m.	Charleston Main Library	68 Callhoun Street, Charleston, SC 29401.
9/22/09	6–9 p.m.	Belle Chasse Auditorium	8398 Highway 23, Belle Chasse, LA 70037.
9/22/09	5–8 p.m.	Portsmouth Public Library	175 Parrott Avenue, Portsmouth, NH 03801.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in

which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* At this time, NMFS has preliminarily determined that the proposed rule and related draft Amendment 3 to the Consolidated HMS FMP are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable law.

Executive Order 12866

This rule has been determined to be not significant under EO 12866.

Executive Order 13132

This rule does not have federalism implications sufficient to warrant preparation of a federalism assessment under EO 13132.

Paperwork Reduction Act

This proposed rule would require fishermen fishing for smooth dogfish to obtain a smooth dogfish permit. If finalized, this requirement would be considered a collection-of-information requirement and would be subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Because NMFS is unsure of the number of fishermen to which this requirement would apply and the extent of duplication, if any, in such a requirement, NMFS has not yet submitted this collection-of-information to OMB for approval. During the public comment period, NMFS hopes to hear from fishermen regarding this proposed requirement. If NMFS finalizes this permitting requirement, NMFS would submit an application for the collection-of-information requirement to OMB for approval and would delay implementation of that portion of the rule pending approval.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Karyl Brewster-Geisz at the **ADDRESSES** above.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB Control Number.

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the IRFA follows. The full IRFA is contained in Amendment 3. Copies of Amendment 3 are available from NMFS (*see* **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to rebuild blacknose sharks, end overfishing of blacknose and shortfin mako sharks, and add smooth dogfish under NMFS management.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to: (1) Implement a rebuilding plan for blacknose sharks to ensure that fishing mortality levels for blacknose sharks are maintained at or below levels that would result in a 70 percent probability of rebuilding in the time frame recommended by the assessment; (2) end overfishing for blacknose and shortfin mako sharks; (3) provide an opportunity for the sustainable harvest of finetooth, bonnethead, and Atlantic sharpnose sharks and other sharks, as appropriate; (4) prevent overfishing of Atlantic sharks; (5) consider smooth dogfish management measures for smooth dogfish sharks in Federal waters, as appropriate; and (6) develop an appropriate mechanism for specifying ACLs to prevent and end overfishing within the constraints of existing data and annually set ACLs and apply AMs to ensure that ACLs are not exceeded.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The proposed rule would apply to the 502 commercial shark permit holders in the Atlantic shark fishery based on an analysis of permit holders on March 18, 2009. Of these permit holders, 223 have directed shark permits and 279 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. NMFS estimates that between 2004 and 2007, approximately 85 vessels with directed shark permits and 31 vessels with incidental shark permits landed SCS. The recreational measures proposed would also impact HMS Angling category and HMS Charter/Headboat category permit holders. In general, the HMS Charter/Headboat category permit holders can be regarded as small businesses, while HMS Angling category permits are typically obtained by individuals who are not considered small entities for purposes of the RFA. In 2008, 4,837 vessels obtained HMS Charter/Headboat category permits.

Finally, the preferred alternatives to add smooth dogfish under NMFS management and develop management measures, such as a Federal permit requirement, would impact an additional group of small entities. The number of entities impacted by this preferred alternative cannot be precisely measured at this time, since there is currently no Federal permit requirement for smooth dogfish fishing. Utilizing VTR and Coastal Logbook data, an estimate of the number of participants in the commercial smooth dogfish fishery can be calculated. Within the VTR data, a primarily Northeast U.S. reporting system, an average of 213 vessels reported smooth dogfish landings per year between 2004 and 2007. Within the Coastal Logbooks data, a primarily Southeast U.S. reporting system, an average of 10 vessels reported smooth dogfish landings per year between 2004 and 2007. From these data, an estimated 223 commercial vessels would require a smooth dogfish permit.

To estimate the number of recreational participants in the smooth dogfish fishery, NMFS examined MRFSS data. Based on MRFSS data from 2004 to 2007, an average of 58,161 smooth dogfish were retained per year by private anglers and CHBs in the recreational fishery. This number is the upper limit of participants in the Federal recreational fishery of the species, and is likely much lower since multiple individual fish are expected to have been caught by one fisherman. Furthermore, based on the life history of the species and the fact the most recreational fisherman are shore-based, the vast majority of smooth dogfish caught recreationally are in coastal, State waters and would not require a Federal HMS angling permit.

Under section 603(b)(4), Agencies are required to describe any new reporting, record-keeping and other compliance requirements. The proposed commercial and recreational measures for SCS and pelagic sharks would not introduce any new reporting and record-keeping requirements. However, alternative F2 would implement Federal management of smooth dogfish and establish a permit for commercial and recreational retention of smooth dogfish in Federal waters.

The proposed Federal permit requirement for smooth dogfish would allow NMFS to collect data regarding participants in the fishery and landings through Federal shark dealer reports. The Federal dogfish permit requirement would require a similar permit application to the other current HMS permits. The information collected on the application would include vessel information and owner identification and contact information. A modest fee to process the application and annual renewal would also likely be required. The cost would likely be similar to the current fee associated with the Atlantic Tunas General Category and Atlantic HMS Angling permits, which both cost $16 in 2009 to obtain. Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Amendment 3. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magunson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed have been grouped into three major categories. These categories include commercial measures, recreational measures, and smooth dogfish. Under commercial measures, alternatives for SCS commercial quotas, gear restrictions, and pelagic shark effort controls were considered and analyzed. The SCS commercial quota alternatives include: (A1) Maintain the existing SCS quota; (A2) establish a new SCS quota of 392.5 mt dw and a blacknose commercial quota of 13.5 mt dw; (A3) establish a new SCS quota of 42.7 mt dw and a blacknose commercial quota of 16.6 mt dw; allow all current authorized gears for sharks; (A4) establish a new SCS quota of 56.9 mt dw and a blacknose commercial quota of 14.9 mt dw; remove shark gillnet gear as an authorized gear for sharks; and (A5) close the SCS fishery. The commercial gear restrictions alternatives include: (B1) Maintain current authorized gears for commercial shark fishing; (B2) close shark gillnet fishery; remove gillnet gear as an authorized gear type for commercial shark fishing; and (B3) close the gillnet fishery to commercial shark fishing from South Carolina south, including the Gulf of Mexico and the Caribbean Sea. The pelagic shark effort controls alternatives include: (C1) Keep shortfin mako sharks in the pelagic shark species complex and do not change the quota; (C2) remove shortfin mako sharks from pelagic shark species quota and establish a shortfin mako quota; (C3) remove shortfin mako sharks from pelagic shark species complex and place this species on the prohibited shark species list; (C4a) establish a minimum size limit for shortfin mako sharks that is based on the size at which 50 percent of female shortfin mako sharks reach the sexual maturity or 32 inches interdorsal length (IDL); (C4b) establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach the sexual maturity or 22 inches IDL; (C5) take action at the international level to end overfishing of shortfin mako sharks; and (C6) promote the release of shortfin mako sharks brought to fishing vessels alive.

Under recreational measures, NMFS considered alternatives for both SCS and pelagic sharks. The recreational measures considered for SCS include: (D1) Maintain the current recreational retention and size limit for SCS; (D2) modify the minimum recreational size for blacknose sharks based on their biology, (D3) increase the retention limit for Atlantic sharpnose sharks based on current catches; and (D4) prohibit retention of blacknose sharks in recreational fisheries. The recreational measures considered for pelagic sharks include: (E1) Maintain the current recreational measures for shortfin mako sharks; (E2a) establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 108 in FL; (E2b) establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 73 inches FL; (E3) take action at the international level to end overfishing of shortfin mako

sharks; (E4) promote the release of shortfin mako sharks brought to fishing vessels alive; and (E5) prohibit retention of shortfin mako sharks in recreational fisheries (catch and release only).

Finally, NMFS also considered alternatives for managing smooth dogfish. These alternatives include: (F1) Do not add smooth dogfish under NMFS management, (F2) add smooth dogfish under NMFS management and establish a Federal permit requirement, and (F3) add smooth dogfish under NMFS management and mirror management measures implemented in the ASMFC Interstate Shark FMP. NMFS considered several alternatives for adding smooth dogfish under NMFS management. These alternatives include: (F2 a1) Establish a smooth dogfish quota that is equal to the average annual landings from 1998–2007 (950,859 lb dw); (F2 a2) establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 (1,270,137 lb dw); (F2 a3) establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007 plus one standard deviation (1,423,727 lb dw); (F2 b1) establish a separate smooth dogfish set-aside quota for the exempted fishing program of 6 mt ww; and (F2 b2) establish a smooth dogfish set-aside quota for the exempted fishing program and add it to the current 60 mt ww set aside quota for the exempted fishing program.

The potential impacts these alternatives may have on small entities have been analyzed and are discussed in the following sections. The preferred alternatives include: A4, B3, C5, C6, D4, E3, E4, F2, and preferred sub-alternatives F2 a3 and F2 b1. The potential impacts these alternatives may have on small entities have been analyzed and are discussed above and in Amendment 3. A summary of the analyses follows. The economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

A. Commercial Measures

1. SCS Commercial Quota

Under the No Action alternative, A1, there would be no additional economic impacts to directed and incidental shark permit holders as the average annual gross revenues from SCS landings, including blacknose shark landings, would be the same as the status quo. The average annual gross revenues from 2004 through 2007 from all SCS meat and fins was $833,634.

Based on data from 2004 to 2007 for directed and incidental shark permit holders that landed non-blacknose SCS, the average directed shark permit holder earned $9,427 in average annual gross revenues, and the average incidental permit holder earned $707 in average annual gross revenues from non-blacknose SCS landings. For those shark permit holders that actually landed blacknose shark during that same time period, the average directed shark permit holder earned $3,640 in average annual gross revenues, and the average incidental shark permit holder earned $1,722 in average annual gross revenues from blacknose shark landings. These revenues are not expected to be impacted by alternative A1. However, since alternative A1 would not reduce blacknose shark mortality to the level needed to rebuild blacknose sharks (or 44,853.8 lb dw), NMFS does not prefer this alternative at this time.

Under alternative A2, NMFS would create a blacknose shark-specific quota and a separate ''non-blacknose SCS'' quota, which would apply to finetooth, Atlantic sharpnose, and bonnethead sharks. NMFS anticipates that non-blacknose SCS landings should not decrease as the non-blacknose SCS quota would only be reduced by the average blacknose shark landings. Therefore, the 68 directed and 29 incidental shark permit holders that had non-blacknose SCS landings would not be affected by the new non-blacknose SCS quota. However, the blacknose shark quota would be a 78-percent reduction based on average landings from 2004–2007.

Average annual gross revenues for the blacknose shark landings for the entire fishery would decrease from $172,197 under the No Action alternative down to $37,500 under alternative A2, which is a 78-percent reduction in average annual gross revenues for blacknose sharks. Thus, the 44 directed and 7 incidental shark permit holders that had blacknose shark landings would be affected by the new blacknose shark quota. As directed permit holders landed the majority of blacknose shark under the No Action alternative, it is anticipated that directed permit holders would experience the largest impacts under alterative A2. The decrease in average annual gross revenues for directed and incidental permit holders would depend on the specific trip limit associated with the blacknose quota established under A2. However, because discards would continue as fishermen directed on non-blacknose SCS, regardless of the retention limits, overall mortality for blacknose sharks would still be above the commercial allowance of 44,853.8 lb dw/year (7,094 blacknose sharks/year), even if the retention of blacknose sharks was prohibited. Therefore, NMFS does not prefer this alternative at this time.

Under alternative A3, NMFS would create a blacknose shark-specific quota and a separate ''non-blacknose SCS'' quota equal to 42.7 mt dw (94,115 lb dw), which would apply to finetooth, Atlantic sharpnose, and bonnethead sharks. NMFS determined that by reducing the overall SCS fishery, NMFS would reduce the level of blacknose shark discards such that the total blacknose shark mortality would stay below the commercial allowance. NMFS would establish a blacknose-specific quota of 16.6 mt dw (36,526 lb dw), which is the amount of blacknose sharks that would be harvested while the non-blacknose SCS quota is harvested; however, incidental shark permit holders would not be allowed to retain any blacknose sharks under alternative A3.

While trip limits would not change for non-blacknose SCS for directed and incidental shark permit holders (*i.e.,* no trip limit for directed fishermen and a 16 non-blacknose SCS/pelagic sharks combined trip limit for incidental fishermen), given the reduction in the non-blacknose SCS quota, NMFS anticipates that the 68 directed and 29 incidental shark permit holders that had non-blacknose SCS landings would be affected by the new non-blacknose SCS quota. Average annual gross revenues for non-blacknose SCS landings for the entire fishery are anticipated to be $119,526. This is an 82-percent reduction in average annual gross revenues compared to average annual gross revenues expected under the No Action alternative, A1. Since directed shark permit holders land approximately 97 percent of the non-blacknose SCS landings as explained in alternative A1, NMFS anticipates that directed shark permit holders would lose more in average annual gross revenues from non-blacknose SCS landings compared to incidental shark permit holders under alternative A3. Average annual gross revenues for directed shark permit holders of non-blacknose SCS under alternative A3 would be $115,821, which is a loss of $525,185 in average annual gross revenues or an 82-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the directed shark permit holders that land non-blacknose SCS, this is an anticipated loss of $7,723

in average annual gross revenues from non-blacknose SCS landings per permit holder. Incidental shark permit holders land approximately 3 percent of the non-blacknose SCS. Average annual gross revenues for incidental shark permit holders of non-blacknose SCS under alternative A3 would be $3,705, which is a loss of $16,802 in average annual gross revenues or also an 82-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the incidental shark permit holders that land non-blacknose SCS, this is an anticipated loss of $579 in average annual gross revenues from non-blacknose SCS landings per permit holder.

The blacknose shark quota would be a 73-percent reduction based on average landings from 2004–2007. In addition, in order to keep the total mortality of blacknose sharks below the commercial allowance for the HMS Atlantic shark fishery, incidental shark permit holders would not be allowed to retain blacknose sharks under alternative A3. Thus, the 44 directed and 7 incidental shark permit holders that had blacknose shark landings would be affected by the new blacknose shark quota. Since incidental shark permit holders would not be able to retain blacknose sharks, the total blacknose shark quota would be available only to directed shark permit holders. Average annual gross revenues for the blacknose shark landings for the directed fishery would decrease from $172,197 under the No Action alternative down to $46,023 under alternative A3, which is a loss of $126,174 or a 73-percent reduction in average annual gross revenues for blacknose sharks for directed shark permit holders.

Spread amongst the directed shark permit holders that land blacknose sharks, there would be an anticipated loss of $2,868 in average annual gross revenues from blacknose landings per permit holder. However, since incidental shark permit holders would not be able to retain blacknose sharks, they would lose an estimated $12,054 in average annual gross revenues from blacknose shark landings. Spread amongst the incidental shark permit holders that land blacknose sharks, there would be an anticipated loss of $1,722 in average annual gross revenues from blacknose landings per permit holder.

Given the large reduction in the non-blacknose SCS quota under alternative A3, which would affect more directed and incidental permit holders compared to the smaller reduction in the non-blacknose SCS quota under alternative A4, NMFS does not prefer alternative A3 at this time.

Under alternative A4, the preferred alternative, NMFS would create a blacknose shark-specific quota and a separate ''non-blacknose SCS'' quota equal to 56.9 mt dw (125,487 lb dw), which would apply to finetooth, Atlantic sharpnose, and bonnethead sharks. NMFS determined that by reducing the overall SCS fishery, NMFS could reduce the level of blacknose shark discards such that the total blacknose shark mortality would stay below the commercial allowance. NMFS would establish a blacknose-specific quota of 14.9 mt dw (32,753 lb dw), which is the amount of blacknose sharks that would be landed while the non-blacknose SCS quota is taken; however, incidental shark permit holders would not be allowed to retain any blacknose sharks under alternative A4. In addition, this alternative assumes that gillnet gear would not be used to harvest sharks as explained under alternatives B2 and B3.

While trip limits would not change for non-blacknose SCS for directed and incidental shark permit holders (*i.e.,* no trip limit for directed fishermen and a 16 non-blacknose SCS/pelagic sharks combined trip limit for incidental fishermen), given the reduction in the non-blacknose SCS quota, NMFS anticipates that the 41 directed and 22 incidental shark permit holders that did not use gillnet gear to land non-blacknose SCS would be affected by the new non-blacknose SCS quota. Average annual gross revenues for non-blacknose SCS landings for the entire fishery are anticipated to be $159,368. This is a 76-percent reduction in average annual gross revenues compared to the average annual gross revenues expected under the No Action alternative, A1. Since directed shark permit holders land approximately 97 percent of the non-blacknose SCS landings as explained in alternative A1, NMFS anticipates that directed shark permit holders would lose more in average annual gross revenues from non-blacknose SCS landings compared to incidental shark permit holders under alternative A4. Average annual gross revenues for directed shark permit holders of non-blacknose SCS under alternative A4 would be $153,841, which is a loss of $487,165 in average annual gross revenues or a 76-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the directed shark permit holders that did not use gillnet gear to land non-blacknose SCS, there could be an anticipated loss of $11,882 in average annual gross revenues from non-blacknose SCS landings per permit holder. Incidental shark permit holders land approximately 3 percent of the non-blacknose SCS landings as explained in alternative A1. Average annual gross revenues for incidental shark permit holders of non-blacknose SCS under alternative A4 would be $4,922, which is a loss of $15,585 in average annual gross revenues or a 76-percent reduction in average annual gross revenues from the average annual gross revenues expected under the No Action alternative, A1. Spread amongst the incidental shark permit holders that did not use gillnet gear to land non-blacknose SCS, there could be an anticipated loss of $708 in average annual gross revenues from non-blacknose SCS landings per permit holder.

The blacknose shark quota would also be a 76-percent reduction based on average landings from 2004–2007. In addition, in order to keep the total mortality of blacknose sharks below the commercial allowance for the Atlantic shark fishery, incidental shark permit holders would not be allowed to retain blacknose sharks under alternative A4. Thus, the 15 directed and 5 incidental shark permit holders that did not use gillnet gear to land blacknose sharks would be affected by the new blacknose shark quota. Since incidental shark permit holders would not be able to retain blacknose sharks, the total blacknose shark quota would be available only to directed shark permit holders.

Average annual gross revenues for the blacknose shark landings for the directed fishery would decrease from $172,197 under the No Action alternative down to $41,269 under alternative A4, which is a loss of $130,928 or a 76-percent reduction in average annual gross revenues from blacknose sharks for directed shark permit holders. Spread amongst the directed shark permit holders that did not use gillnet gear to land blacknose sharks, there could be an anticipated loss of $8,729 in average annual gross revenues from blacknose landings per permit holder. However, since incidental shark permit holders would not be able to retain blacknose sharks, they would lose an estimated $12,054 in average annual gross revenues from blacknose shark landings. Spread amongst the incidental shark permit holders that did not use gillnet gear to land blacknose sharks, there could be an anticipated loss of $2,411 in average annual gross revenues from blacknose landings per permit holder.

NMFS prefers alternative A4 at this time because by reducing effort in the overall SCS fishery, NMFS could reduce the level of blacknose shark discards such that the total blacknose shark mortality would stay below the commercial allowance needed to rebuild the stock. While gillnet fishermen would be affected the most by alternative A4 in combination with alternative B2 or B3, with estimated gross revenue losses between $377,928 and $365,067 from lost non-blacknose SCS and blacknose landings, alternative A4 would allow for a higher non-blacknose SCS quota (56.9 mt dw) compared to alternative A3 (42.7 mt dw). This higher quota would benefit the larger SCS fishery, while the prohibition of gillnet gear would affect a small number of directed shark permit holders that use gillnet gear. Therefore, NMFS prefers alternative A4 at this time.

Alternative A5 would close the entire SCS commercial shark fishery, prohibiting the landing of any SCS, including blacknose sharks. Thus, this alternative would eliminate landings of all SCS, including finetooth, Atlantic sharpnose, bonnethead, and blacknose sharks. This would have negative economic impacts on the average 85 directed shark permit holders, and the average 31 incidental shark permit holders that had SCS landings during 2004–2007. This would result in a loss of average annual gross revenues of $661,513 for non-blacknose SCS and $172,197 from blacknose shark landings for a total loss of $833,710 in average annual gross revenues from SCS landings. Directed shark permit holders would lose $641,006 in average annual gross revenues from non-blacknose SCS landings and $160,143 in average annual gross revenues from blacknose shark landings for a total of $801,149 in average annual gross revenues. Spread among the 85 directed shark permit holders that land SCS, this could result in a loss in average annual gross revenues of $9,426 per permit holder.

Incidental shark permit holders would lose $20,507 in average annual gross revenues from non-blacknose SCS landings and $12,054 in average annual gross revenues from blacknose shark landings for a total of $32,561 in average annual gross revenues under alternative A5. Spread among the 31 incidental shark permit holders that land SCS, this could result in a loss in average annual gross revenues of $1,050 per permit holder.

In addition, as gillnet gear is the primary gear used to target SCS, it is assumed that directed shark gillnet fishing would end, except for fishermen that use gillnet gear to strikenet for blacktip sharks. Approximately 11 directed shark permit holders use gillnet gear to land LCS. This would result in a decrease in LCS landings of 102,171 lb dw and a decrease in average annual gross revenues of $107,280. Spread among the 11 directed shark permit holders that land LCS with gillnet gear, this alternative would result in a loss in average annual gross revenues of $9,753 per permit holder.

While this alternative could reduce blacknose mortality below the commercial allowance of 44,853.8 lb dw, it would also completely eliminate the fishery for all SCS. Of the alternatives analyzed, alternative A5 would result in the most significant economic impacts to small entities. In addition, this alternative would severely curtail data collection on all SCS that could be used for future stock assessments. Thus, NMFS does not prefer this alternative at this time.

2. Commercial Gear Restrictions

Under alternative B1, the No Action alternative, NMFS would maintain the current gear restrictions for rod and reel, gillnet, and BLL gear. Therefore, the economic impacts of alternative B1 would be the same as the status quo, and no negative economic impacts would be anticipated under alternative B1. On average from 2004–2007, the directed and incidental shark permit holders earned average annual gross revenues from SCS landings of $833,634, while the directed and incidental permit holders that landed LCS earned larger gross revenues of $3,328,663. The smooth dogfish fishery is smaller than the other fisheries and only has average annual gross revenues of $371,786 for State and Federally permitted fishermen reporting to the ACCSP. Based on this alternative, the average annual gross revenues of these fisheries would remain the same as the status quo. The average number of directed and incidental shark permit holders that reported SCS landings in the Coastal Fisheries logbook from 2004–2007 were 116 (85 directed and 31 incidental shark permit holders), and the LCS fishery had an annual average of 162 permit holders (129 directed and 33 incidental shark permit holders) reporting LCS landings in the Coastal Fisheries logbook from 2004–2007. The number of permit holders would not be impacted by the No Action alternative.

Under alternative B2, NMFS would remove gillnet gear as an authorized gear type for commercial shark fishing. This alternative would have significant negative economic impacts by potentially affecting 30 directed and 7 incidental shark permit holders. On average, directed shark permit holders landed 289,546 lb dw of SCS with gillnet gear. This is equivalent to $365,955 in lost average annual gross revenues from SCS landings for directed shark permit holders. Based on average ex-vessel prices per pound from 2004–2007, directed shark permit holders made $807,792 in average annual gross revenues from SCS landings. On average, incidental shark permit holders landed 9,465 lb dw of SCS with gillnet gear. This is equivalent to $11,973 in lost average annual gross revenues from SCS landings for incidental shark fishermen due to the prohibition of gillnet gear. Based on average ex-vessel prices per pound from 2004–2007, incidental shark permit holders made $25,843 from SCS landings under the status quo. This represents a 45 percent reduction in SCS revenues for directed shark permit holders and a 46 percent reduction in SCS revenues for incidental shark permit holders compared to the No Action alternative, alternative B1.

This alternative would have a minimal negative economic impact on the LCS fishery. Only 11 directed and 5 incidental shark permit holders out of the 162 total shark permit holders would be affected. On average, directed shark permit holders landed 102,171 lb dw of LCS with gillnet gear. This is equivalent to $107,280 in lost average annual gross revenues from LCS landings (3 percent reduction). On average, incidental shark permit holders landed 1,961 lb dw of LCS with gillnet gear. This is equivalent to $2,059 in lost average annual gross revenues from LCS landings for incidental shark permit holders due to the prohibition of gillnet gear. In total ($109,339), this is approximately 3 percent of the gross revenues for the entire LCS fishery under the status quo (*i.e.,* $3,328,663).

Gillnets are also the primary gear type used to catch smooth dogfish. Within the VTR data, a primarily Northeast U.S. reporting system, an average of 213 vessels reported smooth dogfish landings per year between 2004 and 2007. Within the Coastal Fisheries Logbooks data, a primarily Southeast U.S. reporting system, an average of 10 vessels reported smooth dogfish landings per year between 2004 and 2007. From these data, an estimate of 223 vessels would require a smooth dogfish permit; however, as fishermen are currently not required to have a permit to retain smooth dogfish, this could be an underestimate of the number of fishermen that would require a Federal commercial permit for smooth dogfish in the future. The average total

annual landings from 1998–2007 was 950,859 lb dw (by State and Federally permitted fishermen reporting to the ACCSP, however, since fishermen do not have to currently report smooth dogfish landings, this could be an underestimate of total landings, and thus, an underestimate of average annual gross revenues for this fishery). Based on average ex-vessel prices per pound from 2004–2007, average annual gross revenues for the entire smooth dogfish fishery totaled $371,786 from smooth dogfish landings. Based on the preferred alternative F2, which would require fishermen who fish for smooth dogfish in Federal waters to obtain a Federal smooth dogfish permit, then under alternative B2, those fishermen would not be able to use gillnet gear to land smooth dogfish. This would have a negative economic impact on fishermen who previously used gillnet gear in Federal waters to land smooth dogfish. However, as fishermen do not have to have a Federal permit currently to land smooth dogfish, NMFS is uncertain of the universe of fishermen who might be affected by alternatives B2 and F2 at this time. However, given the potential large negative economic impacts of this alternative to the SCS, LCS, and smooth dogfish fisheries, NMFS does not prefer this alternative at this time.

Under alternative B3, the preferred alternative, NMFS would close the commercial gillnet fishery from South Carolina south, including the Gulf of Mexico and the Caribbean Sea. This would have a negative economic impact on Federally permitted directed and incidental shark permit holders. In the SCS fishery, this alternative would affect an average of 27 directed and 5 incidental shark permit holders out of the average 116 total shark permit holders that landed SCS from 2004–2007. The SCS gillnet fishery from South Carolina south accounts for 44 percent of the total directed shark permit holder landings, and 26 percent of landings in the incidental fishery. On average, directed shark permit holders landed 283,462 lb dw ($358,261) of SCS with the gillnet gear from South Carolina south. Thus, directed shark permit holders would lose $358,261 in average annual gross revenues from SCS landings from the gillnet prohibition under alternative B3. Based on average ex-vessel prices from 2004–2007, directed shark permit holders made $807,792 in average annual gross revenues from SCS landings. On average, incidental shark permit holders landed 5,381 lb dw ($6,807) of SCS with gillnet gear from South Carolina south. Thus, incidental shark permit holders would lose $6,807 in average annual gross revenues from non-blacknose SCS landings under alternative B3. The directed and incidental shark permit holders would lose average annual gross revenues of $365,068 from their current gross revenues of $833,634.

This alternative would have minor economic impacts on the LCS fishery. It would only affect 12 directed and incidental shark permit holders. The directed shark permit holders would lose $106,189 in average annual gross revenues from lost LCS landings in gillnet gear from South Carolina south under alternative B3. Incidental shark permit holders would lose $290 from lost LCS landings in gillnet gear from South Carolina south. In total ($106,479), this is only 3 percent of the average annual gross revenues (*i.e.,* $3,328,663) from LCS landings compared to the LCS fishery under the status quo.

Alternative B3, in combination with the preferred alternative F2, would not affect the social and economics impacts of the smooth dogfish fishery. Smooth dogfish are primarily caught from North Carolina north. The average total landings/year is 950,859 lb dw/year (by State and Federally permitted fishermen reporting to the ACCSP, however, since fishermen do not have to currently report smooth dogfish landings, this could be an underestimate of total landings, and thus, an underestimate of average annual gross revenues for this fishery), which translates into average annual gross revenues of $371,786 lb dw/year from smooth dogfish landings. Given smooth dogfish are not typically landed with gillnet gear from South Carolina south, NMFS anticipates that this alternative, in combination with the preferred alternative F2, would not cause any loss in average annual gross revenues from smooth dogfish landings. Since this alternative would assist NMFS in reaching commercial allowance for blacknose sharks for the commercial shark fishery, and has minimal economic impacts to LCS and smooth dogfish shark fishermen, NMFS prefers this alternative at this time.

3. Pelagic Shark Effort Controls

The No Action alternative, C1, would not modify or alter commercial fishing practices for shortfin mako sharks or other shark species. There would be no additional economic impacts to directed and incidental fishermen as the average annual gross revenues from shortfin mako sharks or other shark species would be the same as the status quo. On average, 72.5 mt dw of shortfin mako sharks were commercially landed between 2004 and 2007, which is equivalent to $350,039 in annual revenues. On average between 2004 and 2007, approximately 90 vessels had shortfin mako shark landings. Directed shark permit holders made up 39 of these vessels. However, since shortfin mako is typically incidentally caught, the average landings value per vessel was estimated by dividing annual revenues amongst all the vessels that have landed shortfin mako. Therefore, the vessels that landed shortfin mako generated an average of $3,889 in gross revenues per year from shortfin mako sharks.

Alternative C2 would implement a species-specific quota for shortfin mako at the level of the average annual commercial landings for this species. This alternative is expected to have neutral or slightly negative economic impacts. On average, 72.5 mt dw (159,834 lb dw) of shortfin mako sharks were commercially landed between 2004 and 2007, which is equivalent to $350,039 in average annual gross revenues. Spread amongst the vessels that landed shortfin mako sharks, the average vessel earned $3,889 in annual gross revenues from shortfin mako sharks. While fishermen would be able to maintain current fishing effort under this alternative, any increase in effort would be restricted by the species-specific quota of 72.5 mt dw. Under the No Action alternative, commercial fishermen currently have a 488 mt dw quota, which could potentially be filled entirely by shortfin mako landings. This could result in maximum annual gross revenues equal to $2,356,106. Thus, there is the potential loss of the option to fish up to the maximum level under this alternative. This difference is $2,006,067 in annual revenues from shortfin mako sharks. Spread amongst the 90 vessels that, on average, have landed shortfin mako sharks from 2004 to 2007, that difference would be $22,289 annually per vessel. However, given shortfin mako sharks are incidentally caught in the PLL fishery, it is unlikely that the entire pelagic shark quota would be entirely filled with shortfin mako landings. NMFS does not prefer this alternative at this time because the United States contributes a small portion of shortfin mako mortality due the lack of a directed fishery compared to shortfin mako mortality resulting from the fishing of foreign vessels outside of the U.S. EEZ. In addition, this alternative does not minimize the potential economic impacts on small entities.

Alternative C3 would remove shortfin mako sharks from the pelagic shark species complex and add them to the

prohibited species list. This alternative is not expected to have negative economic impacts for commercial fishermen because it is not a species that is targeted by commercial fishermen. Shortfin mako sharks are predominately caught incidentally in the PLL fishery and, on average, the commercial landings for shortfin mako sharks, from 2004 to 2007 were 72.5 mt dw with an estimated gross ex-vessel value of $350,039. However, since shortfin makos would be placed on the prohibited species list under alternative C3, there could be an estimated reduction in average annual gross revenues of $350,039 to the commercial fishermen. Based on the average number of vessels that have landed shortfin mako from 2004 to 2007, the revenue reductions would be approximately $3,889 per vessel annually. In addition, this alternative could lead to increased operation time if commercial fishermen have to release and discard all shortfin makos that are caught on the PLL gear. In addition, if the commercial PLL fleet expands in the future, placing shortfin mako sharks on the prohibited species list could result in a loss of future revenues for the commercial PLL fishery. Thus, NMFS does not prefer this alternative at this time.

Alternative C4a would establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of female shortfin mako sharks reach sexual maturity or 32 inches IDL. The summed dressed weight of all shortfin mako sharks kept under the 32 inches IDL size limit made up 1.4 percent of total dressed weight landings of shortfin mako sharks based on POP data. NMFS estimated this would reduce shortfin mako harvests by 2,061.1 lb dw. The economic impacts of this restriction would be an average annual gross revenues loss of $4,513 for this fishery. Spread amongst the 90 vessels that have landed shortfin mako sharks from 2004 to 2007, the per vessel losses would be approximately $50 annually.

Alternative C4b would establish a minimum size limit for shortfin makos that is based on the size at which 50 percent of male shortfin mako sharks reach sexual maturity or 22 inches IDL. The summed dressed weight of all kept shortfin mako sharks under the 22 inches IDL size limit made up 0.02 percent of dressed weight landings of shortfin mako based on POP data. NMFS estimated this would reduce shortfin mako harvests by 34.3 lb dw. The economic impacts of this restriction would be an average annual gross revenues loss of $75 for this fishery.

Alternatives C4a and C4b would have minimal economic impacts because only a small percentage of commercial landings would be affected by the size restrictions. Of the two alternatives, the negative economic impact of C4a would be greater, as commercial landings by weight are 2,026.8 lb dw greater than in alternative C4b. Despite these minimum economic impacts, since the size limits would not reduce fishing mortality of shortfin mako sharks in the commercial sector, NMFS does not prefer these alternatives at this time.

Under alternative C5, the preferred alternative, NMFS would take action at the international level to end overfishing of shortfin mako sharks. In the short term, this alternative would not result in any negative economic impacts on commercial fishermen as it would not restrict commercial harvest of shortfin mako sharks, nor alter the pelagic shark quota. Therefore, the social and economic impacts of alternative C5 would be the same as described in the No Action alternative C1. However, this alternative could have negative economic impacts in the long term if directed management measures were adopted at an appropriate international forum that would require the reduction of landings domestically for shortfin mako sharks. Recommended reductions in landings, if implemented by multiple nations, would ultimately end overfishing of shortfin mako. Therefore, NMFS prefers alternative C5 at this time.

Alternative C6, the preferred alternative, would promote the release of shortfin mako sharks brought to fishing vessels alive. This alternative would likely not result in any negative economic impacts on commercial fishermen as it does not restrict commercial harvest of shortfin mako sharks that are alive at haulback, and quotas and retention limits would remain as described in the No Action alternative C1. However, as this alternative could result in the reduction of fishing mortality of shortfin mako sharks by encouraging fishermen to release shortfin mako sharks brought to the fishing vessel alive, NMFS prefers this alternative at this time.

B. Recreational Measures

1. Small Coastal Sharks

Under alternative D1, the No Action alternative, NMFS would maintain the current recreational management measures, including the current retention limits and size limits for SCS. Therefore, the economic impacts of alternative D1 would be the same as the status quo, and no negative economic impacts would be anticipated under alternative D1. However, as this alternative would not help rebuild blacknose sharks, NMFS does not prefer this alternative at this time.

Alternative D2 would modify the minimum recreational size for blacknose sharks based on the biology of blacknose sharks. This would lower the current size limit from 54 inches FL to 36 inches FL, the size at which 50 percent of the female blacknose sharks reach sexual maturity. This could increase the landings of recreationally harvested blacknose sharks and, therefore, have positive economic impacts for small business entities supporting recreational fishermen. The potential for increased landings associated with the lower size limit could marginally increase demand for charter/headboat services and for products and service provided by shoreside businesses that support recreational fishermen. Since this alternative could result in the increase of blacknose shark recreational landings, and NMFS needs to reduce the number of blacknose shark landings in order to rebuild the stock, NMFS does not prefer this alternative at this time.

Alternative D3 would increase the retention limit for Atlantic sharpnose sharks based on their current catches and stock status. Any increase in the retention limit for Atlantic sharpnose sharks would provide positive economic impacts for recreational fishermen, especially if this resulted in more charter trips for charter/headboats. However, since the latest stock assessment suggests that increased fishing efforts could result in an overfished status and/or cause overfishing to occur in the future (NMFS, 2007), NMFS does not prefer this alternative at this time.

Under alternative D4, the preferred alternative, NMFS would prohibit the retention of blacknose sharks in the recreational fishery. While recreational fishermen would likely still catch blacknose sharks when fishing for other fish, they would not be permitted to retain blacknose sharks and would have to release them. This could have negative economic impacts on recreational fishermen, including tournaments and charter/headboats if the prohibition of blacknose sharks resulted in fewer charters and reduced tournament participation. However, since blacknose sharks are not one of the primary species targeted by recreational anglers, in tournaments, or on charters, NMFS does not anticipate large negative economic impacts from this alternative on tournaments or charter/headboat businesses. Therefore,

NMFS prefers this alternative at this time since it meets the objectives of this rule of reducing overfishing of blacknose sharks while also minimizing economic impacts on small entities.

2. Pelagic Sharks

Maintaining the current recreational measures for shortfin mako sharks under alternative E1 would likely not result in any adverse economic impacts on small entities since the No Action alternative would not modify or alter recreational fishing practices for shortfin mako sharks or other shark species. However, this alternative would not meet the objective of this rule in reducing overfishing of shortfin mako sharks, thus, NMFS does not prefer this alternative at this time.

Alternative E2a would set a minimum size limit for shortfin mako sharks of 108 inches FL in the recreational fishery. This would have the most severe economic impacts of all the alternatives considered, as almost all of the reported shortfin mako sharks landed (99.5 percent) were smaller than the proposed 108 inch FL size limit and would have to be released. This alternative would basically create a catch-and-release fishery for shortfin mako sharks. The impacts of alternative E2b would be less severe than alternative E2a, as it would set a minimum size limit for shortfin mako sharks of 73 inches FL in the recreational fishery. This would result in a 60.3 percent overall reduction in recreational shortfin mako shark landings. Under this alternative, economic impacts would be greater on the non-tournament recreational mako shark fishery, as 81 percent of those landings would fall below the 73 inch FL size limit. The percentage of recreational landings during tournaments that would be released under alternative E2b would be less than the non-tournament recreational landings (51.7 percent to 81 percent, respectively). According to LPS data, 41 percent of shortfin mako sharks caught are kept; therefore, size limits in alternatives E2 may have a substantial economic impact on the recreational fishery. Thus, NMFS does not prefer E2a or E2b at this time.

Under alternative E3, NMFS would take action at the international level to end overfishing of shortfin mako sharks. This alternative would not result in any changes in the current recreational regulations regarding bag or size limits for shortfin mako sharks. Therefore, this alternative would likely not result in any negative economic impacts for recreational fishermen and the small businesses that support those recreational fishing activities in the short term as compared to the No Action alternative, E1. In addition, this alternative could help end overfishing of shortfin mako sharks in the long term through an international plan to conserve shortfin mako sharks. Therefore, NMFS prefers this alternative at this time.

Under alternative E4, NMFS would promote the live release of shortfin mako sharks in the recreational shark fishery, but this alternative would not result in any changes in the current recreational regulations regarding bag or size limits for shortfin mako sharks. Therefore, this alternative would likely not result in any economic impacts compared to the No Action alternative, alternative E1. However, it would encourage the live release of shortfin mako sharks, and could help reduce fishing pressure on this species. Therefore, NMFS prefers this alternative at this time.

Under alternative E5, NMFS would remove shortfin mako sharks from the authorized species list and add them to the prohibited species list. Placing shortfin mako sharks on the prohibited species list would make the recreational fishery for shortfin mako sharks a catch-and-release fishery. Although a small number of shortfin mako sharks were landed in the recreational fishery from 2004 to 2007, it is also an important fishing tournament species. Fishing tournaments are an important component of HMS recreational fisheries. In 2008, there were 42 shark tournaments throughout the U.S. Atlantic Coast, including the Gulf of Mexico and the Caribbean Sea. Therefore, adding this species to the prohibited species list could lead to negative economic impacts for tournament operators since they may have to modify their tournament rules and could face reduced demand for participation, and thus reduce revenues from entry fees. A recreational catch-and-release fishery for shortfin mako may also reduce demand for CHB trips that target shortfin mako sharks. In addition, since the United States only contributes to a small portion of the overall mortality for shortfin mako sharks, prohibiting them in the recreational fishery would not end overfishing for this species. Given these reasons and the economic impacts of this alternative are estimated to be higher than that of the preferred alternatives, NMFS does not prefer this alternative at this time.

C. Smooth Dogfish

Under alternative F1, the no action alternative, NMFS estimates that there would not be any economic impacts to small entities beyond the status quo. This alternative would have the lowest costs alternative to small entities. However, applying the No Action alternative would not meet the objectives of this rule since it would preclude gathering fishery participant information. Therefore, NMFS does not prefer this alternative at this time.

Implementing Federal management of smooth dogfish through alternative F2 would focus on characterizing the fishery and stock status, but would not actively change catch levels or rates. Therefore, this alternative would likely have minor economic impacts on small entities. Business entities that fish commercially for smooth dogfish would have to purchase an open access smooth dogfish commercial fishing permit, and dealers would have to report smooth dogfish landings. The costs to small entities would include the costs of obtaining the permit, the time involved in completing the permit form, and the administrative costs associated with reporting landings. In addition, recreational anglers that would want to retain smooth dogfish in Federal waters would need to purchase an HMS Angling category permit. While this alternative results in more costs to small entities than alternative F1, it helps meet the objectives of this rule of gathering more information on participation in this fishery, and therefore is preferred at this time.

Sub-alternatives F2 a1, which would establish a smooth dogfish quota that is equal to the average annual landings from 1998–2007, and F2 a2, which would establish a smooth dogfish quota equal to the maximum annual landing between 1998–2007, could potentially have negative social and economic impacts on fishermen if the associated quotas reflect a significantly underreported fishery. If the actual landings are higher than these two quotas, fishermen would be prevented from fishing at status quo levels, and thus experience negative economic impacts. Thus, NMFS does not prefer these two sub-alternatives at this time.

Sub-alternative F2 a3, which would establish a smooth dogfish quota above the maximum annual landing between 1998–2007, is anticipated to have neutral economic impacts. Establishing a quota of maximum historical annual landings plus one standard deviation between the years 1998 and 2007 would allow a buffer for potential unreported landings during that time. This would allow the fishery to continue in the future without having to be shut down prematurely, which may not be warranted given smooth dogfish sharks

have not been assessed. Thus, NMFS prefers sub-alternative F2 a3 at this time.

There are no negative economic impacts anticipated with sub-alternative F2 b1. There is no charge associated with fishermen and researchers obtaining an EFP, SRP, display permit, or LOA for research or the collection for public display. In addition, NMFS would establish a smooth dogfish set aside that would accommodate current and future research activities. Thus, NMFS does not anticipate any negative social and economic impacts associated with sub-alternative F2 b1, and NMFS prefers sub-alternative F2 b1 at this time.

As with sub-alternative F2 b1, there are no negative economic impacts anticipated with sub-alternative F2 b2. There is no charge associated with fishermen and researchers obtaining an EFP, SRP, display permit, or LOA for research or for the collection for public display. In addition, NMFS would establish a smooth dogfish set-aside that would accommodate current and future research activities. Thus, NMFS does not anticipate any negative social and economic impacts associated with sub-alternative Fb1.

Alternative F3, which would implement management measures for smooth dogfish that complement the ASMFC plan, would likely have neutral to slightly positive economic impacts. Most of the ASMFC regulations would not change the smooth dogfish fishery, and would therefore, would have neutral impacts on fishermen. In addition, the ASMFC's consideration of removing the two net-hour check provision and allowing fishermen to process smooth dogfish while at sea would allow fishermen to conduct the fishery as they have in the past, and therefore, result in neutral or slightly positive economic impacts. However, since NMFS considers the requirements for gillnet checks and maintaining shark fins naturally attached through offloading necessary conservation tools for protected resources and to prevent shark finning, NMFS does not prefer this alternative at this time.

List of Subjects

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Foreign relations, Penalties, Reporting and recordkeeping requirements.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 17, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter II (part 229) and Chapter VI (parts 600 and 635) are proposed to be amended as follows:

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

§ 229.2 [Amended]

2. In § 229.2, the definition of ''Spotter plane'' is removed.

3. In § 229.3, paragraphs (k) and (l) are revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in § 229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), (f)(2)(iii), (f)(2)(iv), and (g)(2), or for (g)(2) unless the gear is stowed as specified in § 229.2.

(l) It is prohibited to fish with or possess shark gillnet gear (*i.e.* gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the areas and during the times specified in § 229.32(f)(1), (g)(1) and (h)(1) unless the gear complies with the restrictions specified in § 229.32(f)(2)(v).

* * * * *

4. In § 229.32:

A. Paragraphs (a)(1) last sentence of the introductory text, (b)(2)(ii)(A)(*6*), (b)(2)(iii) heading, (f)(2)(ii)(A), (f)(2)(ii)(B), and (g)(3) are revised.

B. Paragraph (b)(2)(i) is removed and reserved.

C. Remove paragraphs (f)(2)(iii) and (vi) and redesignate paragraphs (f)(2)(iv) and (v) as paragraphs (f)(2)(iii) and (iv), respectively.

D. Remove paragraphs (g)(2) and (4) and redesignate paragraph (g)(3) as paragraph (g)(2).

E. Remove paragraphs (b)(2)(iii)(A) heading and (h)(2).

The revisions read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) * * * The gear types affected by this plan include gillnets, (*e.g.,* anchored, drift, gillnet, sink and stab net) as defined in § 229.2, and trap/pots.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) * * *

(*6*) Gillnet gear in the Southeast U.S. Restricted Area S and Other Southeast Gillnet Waters must be marked with a yellow marking.

* * * * *

(iii) *Requirements for all specified areas—Surface buoy markings.* * * *

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(A) Except as provided under paragraph (f)(2)(iv) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraph (f)(2)(iii) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

* * * * *

(g) * * *

(3) *Restrictions for Southeast Atlantic gillnet fishery.* No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area north of 29°00′ N. lat. from November 15 through April 15 and south of 29°00′ N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (D) of this section for the Mid/South Atlantic Gillnet Waters, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

* * * * *

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

5. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

6. In § 600.1204, paragraphs (g) through (l) are revised to read as follows:

§ 600.1204 Shark finning; possession at sea and landing of shark fins.

* * * * *

(g) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the ''weighout slips'' specified in § 635.5(a)(2) of this chapter.

(h) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c) of this chapter.

(i) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall engage in shark finning.

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall possess on board shark fins without the fins being naturally attached to the corresponding carcass(es), although sharks may be dressed at sea.

(k) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall land shark fins without the fins being naturally attached to the corresponding carcass(es).

(l) A dealer may not purchase, from an owner or operator of a fishing vessel issued an Atlantic commercial shark permit who lands shark in an Atlantic coastal port, fins that were not naturally attached to the corresponding carcass at the time of landing or whose wet weight exceeds 5 percent of the dressed weight of the corresponding carcass(es).

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

7. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

8. In § 635.1, paragraph (a) is revised to read as follows:

§ 635.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Consolidated Highly Migratory Species Fishery Management Plan and its amendments. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, under the authority of the Magnuson-Stevens Act.

* * * * *

9. In § 635.2, the definitions of ''Federal Atlantic commercial shark permit,'' and ''Non-blacknose SCS,'' are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Federal Atlantic Commercial Shark Permit means any of the following commercial permits: the shark directed limited access permit, the incidental shark limited access permit, and the smooth dogfish permit issued pursuant to § 635.4.

* * * * *

Non-blacknose SCS means one of the species, or part thereof, listed in paragraph (A) of table 1 in appendix A to this part other than the blacknose shark (*Carcharhinus acronotus*).

* * * * *

10. In § 635.4, paragraphs (e) and (g)(2) are revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(e) *Shark vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, at least one of three types of commercial shark permits: shark directed limited access permit, shark incidental limited access permit, or a smooth dogfish permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(2) The only valid Federal commercial shark directed and shark incidental limited access permits are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(3) Persons issued or required to be issued a Federal commercial shark directed or shark incidental limited access permit may harvest, consistent with the other regulations in this part, any species in Table 1 of Appendix A of this part except for the dogfish sharks listed in the other complex. A directed or incidental shark limited access permit may be issued to a vessel that also holds a smooth dogfish permit.

(4) Persons issued or required to be issued a Federal commercial smooth dogfish permit may harvest, consistent with the other regulations in this part, only the dogfish sharks listed in the other complex. A smooth dogfish permit may be issued to a vessel that also holds either a directed or incidental shark limited access permit.

(5) A commercial permit for sharks is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark EFP, or fishes exclusively within State waters.

* * * * *

(g) * * *

(2) *Shark.* A first receiver, as defined in § 635.2, of Atlantic sharks, including dogfish sharks listed in the other complex, must possess a valid dealer permit.

* * * * *

11. In § 635.5:

A. Paragraph (a)(4) is removed.

B. Paragraph (a)(5) is redesignated as paragraph (a)(4).

C. Paragraph (b)(1)(i) is revised.

The revision reads as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4 must submit to NMFS all reports required under this section. All reports must be species-specific and must include information about all HMS landed regardless of

where harvested or whether the vessel is Federally permitted under § 635.4. For sharks, each report must specify both the total fin weight and the total dressed weight of the carcass(es) separately from each other. In cases where different dealers handle the fins and the shark meat, either the report required in this section or the weighout slip required in paragraph (a)(2) of this section must indicate which dealer handled which portion of the shark. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in the existing dealer permit being revoked, suspended, or modified, and in the denial of any permit applications.

* * * * *

12. In § 635.20, paragraph (e) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(e) *Sharks.* All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins naturally attached. All sharks, except Atlantic sharpnose, bonnethead, smooth dogfish, and Florida dogfish, landed under the recreational retention limits specified at § 635.22(c) must be at least 54 inches (137 cm) FL.

* * * * *

13. In § 635.21, paragraphs (d)(1)(iii)(B) and (e)(3) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(B) *Northern South Carolina.* Bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

* * * * *

(e) * * *

(3) *Sharks.* (i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) No person may fish for or possess sharks with gillnet gear onboard south of 33°52′ N. Lat. (the northern border of South Carolina), including in the Gulf of Mexico and Caribbean Sea.

(iv) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title.

(vi) While fishing for sharks with a gillnet, the gillnet must remain attached to at least one vessel at one end, except during net checks. Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. Smalltooth sawfish should not be removed from the water while being removed from the net.

* * * * *

14. In § 635.22, paragraphs (a) and (c) are revised to read as follows:

§ 635.22 Recreational retention limits.

(a) *General.* Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic Ocean including the Gulf of Mexico and Caribbean Sea, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in State waters.

* * * * *

(c) *Sharks.* (1) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e): any of the non-ridgeback sharks listed under heading A.2 of Table 1 in Appendix A of this part, tiger (*Galeocerdo cuvier*), blue (*Prionace glauca*), common thresher (*Alopias vulpinus*), oceanic whitetip (*Carcharhinus longimanus*), porbeagle (*Lamna nasus*), shortfin mako (*Isurus oxyricnchus*), Atlantic sharpnose (*Rhizoprionodon terraenovae*), finetooth (*C. isodon*), and bonnethead (*Sphyrna tiburo*).

(2) In addition to the sharks listed under paragraph (c)(1) of this section, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip; regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel.

(3) In addition to the sharks listed under paragraphs (c)(1) and (c)(2) of this section, smooth and Florida dogfish sharks may be retained.

(4) No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained regardless of where harvested. Sharks not listed in paragraphs (c)(1), (2), and (3) of this section may not be retained.

(5) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued a commercial shark vessel permit under § 635.4. If a commercial Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued a commercial shark vessel permit under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

* * * * *

15. In § 635.24, paragraphs (a)(4), (a)(5), and (a)(6) are revised and paragraph (a)(7) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(4)(i) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28.

(ii) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land SCS, including blacknose sharks, if the SCS fishery is open per §§ 635.27 and 635.28.

(iii) A person who owns or operates a vessel that has been issued an incidental LAP for sharks may retain, possess, or land no more than 16 non-blacknose SCS and pelagic sharks, combined, per trip, if the respective fishery is open per §§ 635.27 and 635.28. Such a person may not retain, possess, or land blacknose sharks.

(5) Only persons who own or operate a vessel that has been issued a Federal commercial smooth dogfish permit may retain, possess, and land smooth or florida dogfish sharks if the respective fishery is open per §§ 635.27 and 635.28.

(6) A person who owns or operates a vessel that has been issued a commercial shark permit may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

(7) A person who owns or operates a vessel that has been issued a commercial shark permit, and who decides to retain sharks, must retain, subject to the trip limits, all dead, legal-sized, non-prohibited sharks that are brought onboard the vessel and cannot replace those sharks with sharks of higher quality or size that are caught later in the trip. Any fish that are to be released cannot be brought onboard the vessel and must be released in the water in a manner that maximizes survival.

* * * * *

16. In § 635.27, paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(iii) through (vii), and (b)(2) are revised and paragraph (b)(1)(viii) is added to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vii) of this section apply to all sharks harvested from the management units, regardless of where harvested. Sharks taken and landed from State waters, even by fishermen without Federal shark permits, must be counted against the fishery quota. Commercial quotas are specified for each of the complexes or species of sandbar sharks, non-sandbar LCS, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle sharks, and other sharks. Any sharks landed as unclassified will be counted against the appropriate complex's or species' quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Fishing seasons.* The fishing season for sandbar sharks, non-sandbar LCS, all small coastal sharks, all pelagic sharks, and other sharks will begin on January 1 and end on December 31.

* * * * *

(iii) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 116.6 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the adjusted base quota is 87.9 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(viii) of this section. This quota is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(iv) *Non-sandbar LCS.* The total base quota for non-sandbar LCS is 677.8 mt dw. This base quota is split between the two regions and the shark research fishery as follows: Gulf of Mexico = 439.5 mt dw; Atlantic = 188.3 mt dw; and Shark Research Fishery = 50 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the total adjusted base quota is 615.8 mt dw. This adjusted base quota is split between the regions and the shark research fishery as follows: Gulf of Mexico = 390.5 mt dw; Atlantic = 187.8 mt dw; and Shark Research Fishery = 37.5 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(viii) of this section.

(v) *Small coastal sharks.* The base annual commercial quota for non-blacknose small coastal sharks is 56.9 mt dw, unless adjusted pursuant to paragraph (b)(1)(viii) of this section. The base annual commercial quota for blacknose sharks is 14.9 mt dw, unless adjusted pursuant to paragraph (b)(1)(viii) of this section.

(vi) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488 mt dw for pelagic sharks other than blue sharks or porbeagle sharks, unless adjusted pursuant to paragraph (b)(1)(viii) of this section.

(vii) *Other sharks.* The base annual commercial quota for other sharks is 645.8 mt dw, unless adjusted pursuant to paragraph (b)(1)(viii) of this section.

(viii) *Annual adjustments.* NMFS will publish in the **Federal Register** any annual adjustments to the base annual commercial quotas or the 2008 through 2012 adjusted base quotas. The base annual quota and the adjusted base annual quota will not be available, and the fishery will not open, until such adjustments are published and effective in the **Federal Register**.

(A) *Overharvests.* If the available quota for sandbar sharks, non-blacknose SCS, blacknose sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle sharks, and other sharks is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. If the annual quota in a particular region or in the research fishery for non-sandbar LCS is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

(B) *Underharvests.* If an annual quota for sandbar sharks, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle, or other sharks is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock (*e.g.,* sandbar shark, porbeagle shark, pelagic shark, or blue shark) or specific species within a quota group (*e.g.,* non-sandbar LCS or non-blacknose SCS) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base

annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012). If the stock is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012) by an equivalent amount of the underharvest up to 50 percent above the base annual quota. For the non-sandbar LCS fishery, underharvests are not transferable between regions and/or the research fishery.

(2) *Public display and non-specific research quota.* The base annual quota for persons who collect non-sandbar LCS, SCS, pelagic sharks, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw). The base annual quota for persons who collect smooth or Florida dogfish sharks under a display permit or EFP is 6 mt ww (4.3 mt dw). The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1 mt dw) and under an EFP is 1.4 mt ww (1 mt dw). No persons may collect dusky sharks under a display permit. Collection of dusky sharks for research under EFPs and/or SRPs may be considered on a case by case basis and any associated mortality would be deducted from the shark research and display quota. All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against these quotas.

* * * * *

17. In § 635.28, paragraph (b) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) *Sharks.* (1) If quota is available as specified by a publication in the **Federal Register**, the commercial fisheries for sandbar shark, non-sandbar LCS, non-blacknose SCS, blacknose shark, porbeagle sharks, blue sharks, pelagic sharks other than blue or porbeagle sharks, and other sharks will remain open as specified at § 635.27(b)(1).

(2) When NMFS calculates that the fishing season landings for sandbar shark, non-sandbar LCS, blue sharks, porbeagle sharks, pelagic sharks other than blue or porbeagle sharks, or other sharks has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for public inspection with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non-sandbar LCS, region is closed, even across fishing years.

(3) When NMFS calculates that the fishing season landings for either blacknose sharks or non-blacknose SCS has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for public inspection with the Office of the Federal Register a notice of closure for the entire SCS fishery, including the blacknose shark fishery, that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for non-blacknose SCS and blacknose sharks is closed, even across fishing years.

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and an NMFS-approved observer is onboard. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group and/or region from a vessel issued a commercial shark permit, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, a shark dealer, issued a permit pursuant to § 635.4 may purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had an NMFS-approved observer on board during the trip sharks were collected.

* * * * *

18. In § 635.30, paragraph (c) is revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(c) *Shark.* (1) In addition to the regulations issued at part 600, subpart N, of this chapter, a person who owns or operates a vessel issued a commercial shark permit under § 635.4 must maintain all the shark fins including the tail on the shark carcass until the shark has been offloaded from the vessel.

While sharks are on board and when sharks are being offloaded, persons issued a commercial shark permit under § 635.4 are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid commercial shark permit may remove the head and viscera of the shark while on board the vessel. At any time when on the vessel, sharks must not have the backbone removed and must not be halved, quartered, filleted, or otherwise reduced. All fins, including the tail, must remain naturally attached to the shark through offloading. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed from the carcass once the shark has been landed and offloaded.

(3) A person who owns or operates a vessel that has been issued a commercial shark permit and who lands sharks in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with part 600, subpart N, of this chapter. Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time. Once landed and offloaded, sharks that have been halved, quartered, filleted, cut up, or reduced in any manner may not be brought back on board a vessel that has been or should have been issued a Federal commercial shark permit.

(4) Persons aboard a vessel that does not have a commercial shark permit must maintain a shark in or from the EEZ intact through landing with the head, tail, and all fins naturally attached. The shark may be bled and the viscera may be removed.

* * * * *

19. In § 635.32, paragraph (e)(3) is revised to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(e) * * *

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the 2006 Consolidated HMS FMP and its amendments, as well as ICCAT recommendations.

* * * * *

20. In § 635.69, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 635.69 Vessel Monitoring Systems.

(a) * * *

(2) Whenever a vessel issued a directed shark LAP, is away from port with bottom longline gear on board, is located between 33°00′ N. lat. and 36°30′ N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board from November 15—April 15.

* * * * *

21. In Appendix A to Part 635, Table 1 of Appendix A to Part 635 is revised to read as follows:

Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Oceanic Sharks

A. *Large coastal sharks:*
1. *Ridgeback sharks:*
Sandbar, *Carcharhinus plumbeus*
Silky, *Carcharhinus falciformis*
Tiger, *Galeocerdo cuvier*
2. *Non-ridgeback sharks:*
Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
B. *Small coastal sharks:*
Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*
C. *Pelagic sharks:*
Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*
D. *Other sharks:*
Smooth dogfish, *Mustelus canis*
Florida dogfish, *Mustelus norrisi*
E. *Prohibited sharks:*
Atlantic angel, *Squatina dumerili*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

* * * * *

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Federal Register

Friday,
July 24, 2009

Part V

Office of Science and Technology Policy

President's Council of Advisors on Science and Technology; Notice of Meeting; Notice

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Notice of Meeting

ACTION: Public Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES: August 6, 2009–August 7, 2009.

ADDRESSES: Washington, DC. On August 6, 2009, the meeting will be held in Room 100 of the Keck Center of the National Academies at 500 5th St., NW., Washington, DC. On August 7, 2009, the meeting will be held in the Truman Room of the White House Conference Center, 726 Jackson Place, Washington, DC.

Type of Meeting: Open and Closed. Further details on the meeting agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/cs/pcast.*

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on August 6, 2009 from 10 a.m.–12 p.m., when they will break for lunch. They will resume meeting in open session from 2 p.m.–6 p.m. On August 7, 2009, PCAST will meet in open session from 10 a.m.–12 p.m., when they will break for lunch. They will resume meeting in open session from 2 p.m.–5 p.m. During these open meetings, PCAST is tentatively scheduled to hear presentations from representatives of the Office of Science and Technology Policy, the Department of Energy, the Environmental Protection Agency, the Department of Health and Human Services, including a panel of speakers on health information technology and comparative effectiveness research. In addition, PCAST will discuss possible studies it may conduct. Additional information and the agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/cs/pcast.*

PCAST will conduct administrative work on August 6, 2009 from 8 a.m.–10 a.m. This administrative work session is closed to the public under 41 CFR 102–3.40(b). Additionally, PCAST will have a closed meeting of approximately 1 hour with the President, which must take place in the Oval Office or the Roosevelt Room of the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1). The precise time of this meeting has not yet been determined but will take place on August 7, 2009.

Public Comments: There will be time allocated for the public to comment on the above agenda items in afternoon of August 6, 2009. This public comment period is designed for substantive commentary on PCAST's work topics, not for business marketing purposes.

Members of the public wishing to reserve speaking time must contact Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov,* (202) 456–6006, or fax your request/comments to (202) 456–6021, at least five (5) business days in advance of the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to no more than five (5) minutes per person, with a total public comment period of 30 minutes. Requests for public comment will be honored on a first-come, first-serve basis. Speakers are asked to bring extra copies of their comments and/or presentation for distribution to PCAST at the meeting.

Written comments are also welcome at any time before or following the meeting. Written comments received at least five (5) business days prior to the meeting will be made available to the members before their meeting. Written comments received after that point may not be reviewed by the members until after the meeting takes place.

Please note that because PCAST operates under FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding agenda, time, and location will be made available on the PCAST Web site at: *http://www.ostp.gov/cs/pcast.* Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov*, (202) 456–6006, or fax your request/comments to (202) 456–6021 prior to 3 p.m. on Wednesday, August 5, 2009. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis. In order to access the White House Conference Center, you must indicate your plan to attend the meeting by 3 p.m. on August 5, 2009.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226 on September 30, 2001. The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers who directly advise the President and the Executive Office of the President. PCAST makes policy recommendations in the many areas where understanding of science, technology, and innovation is key to strengthening our economy and forming policy that works for the American people. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John Holdren, Assistant to the President for Science and Technology, and Director of the Office of Science and Technology Policy; Dr. Harold Varmus, President, Memorial Sloan-Kettering Cancer Center; and Dr. Eric Lander, Founding Director, Broad Institute.

Meeting Accommodations: Individuals requiring special accommodation to access the public meetings listed above should contact Dr. Stine at least five business days prior to the meeting so that appropriate arrangements can be made.

Exceptional Circumstances Justifying 14-Day Notice: This notice is being published in the **Federal Register** 14 calendar days prior to the meeting, rather than 15 days prior, due to exceptional circumstances. It took longer than anticipated to find an available and accessible meeting location near the White House which could provide the enhanced webcasting services necessary to keep the meeting open and transparent to the public.

Deborah D. Stine,

Executive Director, President's Council of Advisors on Science and Technology Policy.

[FR Doc. E9–17905 Filed 7–23–09; 1:00 pm]

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